

# **A Defence of Equality among Societal Cultures.**

*Individual Rights of Cultural Membership and Group  
Capabilities.*

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## Introduction

Issues of equality among members of different cultures in multicultural societies have for a long time been the object of philosophical discussions. Several perspectives stress the importance of rights for cultural protection, but no agreement has been reached on the identification of the holders of these rights. If on the one hand liberals appeal to the legitimacy of cultural rights for individuals, on the other hand communitarian perspectives focus on the primary role played by groups in the articulation of culture. Communitarian theories therefore support the attribution of rights for cultural groups, although until now no exhaustive approach seems to establish the need of rights for groups. Hence, a deep gap in the understanding and the establishment of rights for the protection of culture crosses the literature and consequently contributes the perpetuation of radical inequalities in opportunities that exist between members of minority and majority cultures.

The aim of this thesis is to fill this gap by establishing the legitimate role of individuals and groups in questions concerning cultural disparities in multicultural societies. In the first two chapters, various arguments will support the establishment of individual rights of cultural membership, by stressing the need of intending cultural membership as a primary good.<sup>1</sup> The third chapter will deal with the notion of capabilities, which aims to legitimise the role of cultural groups in issues over justice in multicultural societies.<sup>2</sup> Through an original account that attributes capabilities to cultural groups, conceived as entities dependent on their members, the danger of attributing rights to collectives is avoided. In addition, the concept of capability is also introduced as the most appropriate criterion for the acknowledgement of a disadvantage peculiar to cultural minorities' members in multicultural contexts. The theory of capabilities

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<sup>1</sup> The notion of primary good has been extracted by John Rawls, *A Theory of Justice* (revised ed., Cambridge, Massachusetts, The Belknap press of Harvard University Press, 1971) pp. 54, 78-81.

<sup>2</sup> The current account of capabilities represents an evolution of Martha Nussbaum's theory of capabilities, as exposed in Martha Nussbaum, *Women and Human Development* (Cambridge, Cambridge University Press, 2000) and Nussbaum, *Frontiers of Justice* (Cambridge, Mass., London, The Belknap Press of Harvard University Press, 2006).

that will be addressed in this thesis aims to correct the deficit in opportunities at the foundation of the unequal political and institutional balance between minority and majority cultures and in their possibility to pursue different ideals of a good life.

# Chapter I

## A Focus on the Analytical Standpoints

Before engaging the main arguments that will be proposed in defence of cultural rights for groups' members and of capabilities for groups, the current debate on the topic of the protection of culture will be analysed. This examination aims to understand and contrast (when necessary) several positions held by both the communitarian and the liberal thoughts. In addition, by underlining the perspectives that will guide the logic of the main arguments further analysed, the two viewpoints of justice as recognition and as universality will be examined, in opposition with the notion of cultural assimilation. The role of freedom of choice will be evaluated in the conclusion of the chapter, where the role of the individual will be stressed as primary in issue of cultural recognition. The structure of this chapter is therefore conceived under the lenses of these standpoints, which will support the legitimacy of the claims further proposed.

### 1.1. Justice as Recognition.

Questions of social justice have, for a long time, focused on an equal distributive pattern of resources and opportunities. Among recent theories of just distribution of goods, the most famous is John Rawls's theory of 'justice as fairness', which shapes just institutions through the application of two principles of justice.<sup>3</sup> These principles are intended by Rawls to be the result of a rational agreement among social members, who put aside preferences and differences for the sake of equal distribution of opportunities. Justice as distribution, therefore, aspires to give each social member a fair amount of goods and opportunities aimed at the free achievement of individual ends. The challenge that theories of justice as recognition levies at theories of distributive justice argues that accounts of distribution focus primarily on the effects, rather than the causes, of an unfair distribution of material resources.

This criticism has been acknowledged both by Iris M. Young and Michel

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<sup>3</sup> Rawls, *A Theory of Justice*, p. 10.

Walzer, among others, in their analysis of domination. Although Walzer examines issues of justice through a distributive perspective, his analysis of monopolies and dominance represents an excellent starting point to understand the danger of concentrating the possession of a particular good in the hands of one individual or group, by excluding its access to other social components.<sup>4</sup> In proposing a theory that intends each social good (and its corresponding sphere of acquisition) as separate from other goods, Walzer draws attention to those problems brought forward by an unequal distribution of resources, as well as to the conditions that cause it, such as unbalanced powers.

It is on the focus on a new perspective that includes questions of equal possession of material goods and issues of power through social relations that Young builds her theory of justice as social recognition. Young agrees with Walzer's analysis of the background conditions of distributive injustice. However, instead of focusing on issues of distribution, she shifts the point of view to features concerning 'nonmaterial social goods such as rights, opportunity, power, and self-respect'.<sup>5</sup> These are the fundamental elements to take into account in a discourse over social justice, though they still require to be further distributed. In particular, she refers to unequal distribution of power and decision-making processes in institutional contexts, which even if are nonmaterial aspects of human life, they nevertheless constitute fundamental components of social inequalities.<sup>6</sup> By criticizing the individualistic tendency of separating individuals from the social and cultural environment in which they grow and live (therefore from the power relationships they build), Young affirms that recognition of these aspects should instead be included in evaluating theories of social justice.

According to Young, recognition implies taking into account the existence and the social relevance of power relations between cultural groups, which she defines as 'an expression of social relations'.<sup>7</sup> The main contribution of Young's

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<sup>4</sup> Michael Walzer, *Spheres of Justice: A Defence of Pluralism and Equality* (Oxford: Blackwell, 1985), pp. 10-13.

<sup>5</sup> Iris M. Young, *Justice and the Politics of Difference* (Princeton, New Jersey, Princeton University Press, 1990), p. 16.

<sup>6</sup> Young, *Justice and the Politics of Difference*, p. 22.

<sup>7</sup> Young, *Justice and the Politics of Difference*, p. 43.

account of recognition is its focus on the establishment of recognition of social forces as the tool against assimilation of cultures and for the guarantee of the liberty of choice. Assimilation would threaten the basic universal rights to express one's individuality and to be worthy of respect. Affirming equality in a context of acculturation implies achieving equality through the cancellation of the differences that exist among individuals. Therefore, liberty of choice does not include any form of acculturation, either voluntary or involuntary.<sup>8</sup> The act of assimilation to another culture always results in extremely high costs for the individual, who has to modify some constituent parts of himself to receive the same respect and opportunities that are secured by the members of the majority.<sup>9</sup>

It is worth noticing that the notion of culture appears among the categories taken into account by Young as aspects that need to be approached through recognition rather than distribution.<sup>10</sup> Non-recognition of cultural differences leads to a form of inequality in society that is impossible to translate to the language of distribution, because it refers to the need of re-institutionalisation of the society under directions other than the redistribution of goods.<sup>11</sup> Unjust distribution of resources could represent a significant obstacle for the achievement of social justice. However, Young's central point argues that the main cause of injustice of distribution is represented by injustice in social institutions, which in turn is implemented by the misleading juxtaposition of the two separate notions of cultural members and cultural groups, leading to a failure of their recognition. In order to correct unequal opportunities due to cultural differences, Young invokes the conceptualization of specific policies of difference which, instead of blurring cultural diversities, encourages them.<sup>12</sup>

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<sup>8</sup> The notion of assimilation has been the object of a debate around Iris M. Young and Brian Barry. If on the one hand Young argues against any form of assimilation, Barry differentiates between three different types and affirms that assimilation is admissible when voluntary. For reference on the positions of the authors, see Young, *Justice and the Politics of Difference*, pp. 158-163 and Brian Barry, *Culture and Equality: An Egalitarian Critique of Multiculturalism* (Cambridge: Polity Press, 2001), pp. 74-75.

<sup>9</sup> A more specific discussion on the topic of the costs involved in changing one's identity will be endorsed in the Chapter II.

<sup>10</sup> Young, *Justice and the Politics of Difference*, p. 15.

<sup>11</sup> Young, *Justice and the Politics of Difference*, p. 21.

<sup>12</sup> At this regard, Young introduces the solution of 'politics of difference', which focus on diversities among individuals and deliver a diverse rights, duties and institutions in relation to each

A slightly different approach to Young's on issues of justice is carried on by Nancy Fraser, who points out that recognition ought not be considered the only method to use against social inequality. By differentiating between 'culture-based' and 'political-economy-based' groups,<sup>13</sup> Fraser affirms that Young fails to narrow the attention solely to the latter of these forms, because, in doing so, she underestimates the issues that create political-economic inequalities.<sup>14</sup> This is the reason why Fraser proposes a '*critical* theory of recognition', which applies a different solution to each situation by distinctly assessing the sources of inequalities.<sup>15</sup> Hence, although recognition represents one of the elements involved in the debate over social justice, any complete theory on this topic should acknowledge both the elements of recognition and distribution and appropriately use them when necessary.

In light of the preceding discussion, it is clear that the tendency assumed by theories of justice in narrowing the debate exclusively to distributive issues needs revision.<sup>16</sup> The standpoint of justice as recognition will be the guideline of the following analyses, which will look at fairness in context of multicultural states through an examination of cultural rights and capabilities.

## 1.2. The Universalistic Perspective.

Only by departing from a universalistic point of view, can it be argued that all societies are voluntarily or involuntarily composed of a series of cultural groups. These groups constitute the majority as well as one or several minorities living in the territory of a state. In light of this premise, it follows that the majority culture should be viewed as a cultural group itself. In fact, it symbolises a set of values and beliefs, and a context of choice that constitute a point of reference for its

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person's position in the social context. For further reference on this topic, see Young, *Justice and the Politics of Difference*, chapter 6, pp. 156-183.

<sup>13</sup> Nancy Fraser, 'Recognition or Redistribution? A Critical Reading of Iris Young's *Justice and the Politics of Difference*', *The Journal of Political Philosophy*: Vol. 3, No. 2, (1995), pp. 172-173.

<sup>14</sup> Fraser, 'Recognition or Redistribution?', pp. 169-170.

<sup>15</sup> Fraser, 'Recognition or Redistribution?', p. 167 and pp. 179-180.

<sup>16</sup> David Schlosberg, 'The Justice of Environmental Justice: Reconciling Equity, Recognition, and Participation in a Political Movement', in Andrew Light and Avner deShalit, eds., *Moral and Political Reasoning in Environmental Practice* (Cambridge, MA: MIT Press, 2003), p. 81.



members. Both minority and majority cultures are to be conceived as cultural groups, in which individuals share their beliefs and achieve common goals.

In many circumstances, members of minorities face a situation of disadvantage that goes against the principle of equal treatment. This situation represents the scenario taken into account in the following analyses, which aim at the reparation of this disadvantage through individual rights of cultural membership and capabilities for cultural groups. Cultural rights for members of cultural minorities should be considered as rights aimed at correcting those inequalities in issues that relate to basic rights that exist with regard to the majority.<sup>17</sup> These basic rights refer, for example, to the right that people have in living in the cultural context they choose, the right of freely building their identity in relation to those principles and beliefs they value, and the right to achieve those goods considered intrinsically valuable for their lives.<sup>18</sup> Thus, two necessary conditions are required for the reparation of the underlined disadvantages. First, people should be free to choose whether to enjoy these rights in the context either of the minority or of the majority culture. Second, they should not be threatened in their choice by the fact that the minority happens to be in a position of disadvantage. Thus, it seems urgent to provide solid ground for minorities' members in order to enable them to freely enjoy their fundamental rights in a position of equality in relation to the majority.

The acknowledgement of this disadvantage, which is the starting point for appreciating a theory of cultural rights for minorities' members, can be ethically understood only through assuming an *impersonal perspective*, which requires undertaking an objective point of view on the assessment of equality.<sup>19</sup> Embracing

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<sup>17</sup> Will Kymlicka, *Liberalism, Community and Culture* (Oxford: Clarendon Press, 1989), p. 189, and Leslie Green, 'Internal Minorities and Their Rights', in Baker J. (ed.), *Group Rights* (Toronto, London: University of Toronto Press, 1994), p. 105.

<sup>18</sup> On the topic of culture as reference for individual choice and for the process of identity-building, see Kymlicka, *Liberalism, Community and Culture*, pp. 164-165; Charles Taylor, *Sources of the Self: the Making of the Modern Identity* (Cambridge: Cambridge University Press, 1989), pp. 27-29. On the topic of rights for cultural minorities, see Kymlicka, *Liberalism, Community and Culture*, pp. 149-154.

<sup>19</sup> This position recalls Adam Smith's 'impersonal spectator', which is aimed at the rightful direction of one's moral behaviour. For reference on Smith's account, see Adam Smith, *The Theory of Moral Sentiments* (Oxford: Clarendon Press, 1976) pp. 114, 130-131.

this perspective enables us to determine the legitimacy of rights and duties for the protection of cultural membership. Additionally, it allows the identification of the appropriate holders of these rights and duties. Impersonality represents an important tool for appreciating minorities' members' claims, particularly because it enables these claims to be acknowledged from an objective perspective, rather than from a partial view. In fact, the outlook that ought to be taken into account asks for recognition of a disadvantage from a *super partes* point of view. In this situation, the need to fulfil the requirements of impersonality requires the recognition for the achievement of equal treatment against the position of disadvantage in which members of minority cultural groups have to live.<sup>20</sup> This is illustrated by Thomas Nagel, who affirms that:

‘[...] Since objectivity also has its significance with respect to values and the justification of conduct, the impersonal standpoint plays an essential role in the evaluation of political institutions. [...] Things do not simply cease to matter when viewed impersonally, and we are forced to recognize that they matter not only *to* particular individuals or groups’.<sup>21</sup>

In contrast with this position, it seems that the perspective adopted by several communitarians rejects the view of impersonality for embracing an approach that emphasises differences. Young argues for the need of a *differentiated citizenship*, which would legitimately recognize the social divergences existing among members of different cultural groups.<sup>22</sup> According to

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<sup>20</sup> This is the meaning that Thomas Nagel confers to the need of finding a point of resolution between what he calls the ‘personal’ and the ‘impersonal’ standpoints [Thomas Nagel, *Equality and Partiality*, (New York, Oxford: Oxford University Press, 1991), pp. 10-20]. On this respect, Nagel argues for a solution that sees these two perspectives satisfied and recognized in a harmonious way. ‘A legitimate system is one which reconciles the two universal principles of impartiality and reasonable partiality so that no one can object that his interests are not being accorded sufficient weight or that the demands made on him are excessive’ (Nagel, *Equality and Partiality*, p. 38).

<sup>21</sup> Nagel, *Equality and Partiality*, pp. 10-11.

<sup>22</sup> On the concept of *differentiated citizenship*, see Iris M. Young, ‘Polity and Group Difference: A Critique of the Ideal of Universal Citizenship’, *Ethics*, Vol. 99, No. 2 (Jan. 1989), p. 251.

her view, universality, in modern liberal states, has to be intended as ‘sameness’, which is contrary to the principles of generality and equal treatment.<sup>23</sup> Therefore, Young’s conclusion touches upon the need of intending citizenship in a different sense than the one in which it is currently conceived: any member of each cultural group should have a unique treatment on the basis of his special claims. For this reason Young affirms that ‘the ideal of impartiality is an idealist fiction’,<sup>24</sup> in that it does not register fundamental differences among citizens. Young’s main aim is therefore to re-equilibrate the two dimensions of private and public and to allow differences in culture, social and economic status to be recognized in both realms.<sup>25</sup> According to Young, in order to achieve this goal, the public sphere should cease to use the current principle of universality and adopt a closer approach to the recognition of different social claims.<sup>26</sup>

Young’s perspective represents a radical solution to the challenges that claims of recognition set. It is unquestionable that differences should be acknowledged not only in the private but also in the public realm, but adopting a *differentiated citizenship* seems not to truly appreciate the important features introduced by the liberal principles.<sup>27</sup> Undertaking Young’s view would lead to the unbalanced situation that accords privileges only for some specific classes of citizens.<sup>28</sup> Furthermore, the radical rejection of the principle of impartiality denies the acknowledgment of differences in opportunities in the social realm and the recognition of minority claims as worthy over social justice. Impartiality, therefore, enables inequality of opportunities to be conceptualised and recognised. As long as an impartial point of view on the contemplation of social issues would be adopted by the society, minorities’ members’ claims would be recognized and discussed. Therefore, impartiality does not lead to the condition of homogeneity

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<sup>23</sup> Young, ‘Polity and Group Difference’, p. 251.

<sup>24</sup> Young, *Justice and the Politics of Difference*, p. 104. Young interchanges the two notions of impartiality and impersonality in her criticism to ‘the ideal of impartiality’; for further reference, see Young, *Justice and the Politics of Difference*, pp. 96-97.

<sup>25</sup> Young, ‘Polity and Group Difference’, p. 255.

<sup>26</sup> Young, ‘Polity and group Difference’, p. 255.

<sup>27</sup> Young, ‘Polity and Group Difference’, p. 251.

<sup>28</sup> See Barry’s discussion over ‘status inequalities’ caused by policies of special treatment for disadvantaged people, in Barry, *Culture and Equality*, p. 116. Giovanni Sartori, *Pluralismo, Multiculturalismo e Estranei: Saggio sulla Società Multiemica* (Milano, Rizzoli, 2000), p. 74.

that Young rejects; rather it allows people to adopt a perspective that is detached from their particular interests. It is only through this point of view that other people's claims could be understood.

Impartiality also represents the key concept for acknowledging the worth of personal choice. Only through adopting an impartial perspective, can personal attitudes be respectfully recognized and protected. In contrast, partiality produces differentiation, which leads to the danger of marginalisation and segregation of cultural minorities outside the boundaries of the majority culture.<sup>29</sup> This is demonstrated, for example, by the condition of marginalisation in which people of black communities live in the suburbs of Paris and New York, or by the life conditions of Indigenous people in Canada. Therefore, it seems that the partial standpoint produces opposite outcomes than the ones initially aimed at. Impartiality protects freedom of choice, as it does not provide any judgement or indication of preferences to orientate people in their choices. However, impartiality does not mean denying the role of preferences in choice; it only does not force people to choose any type of preference from any particular cultural context. This is particularly important as it will be argued that freedom of choice represents a fundamental aspect in legitimising the attribution of cultural rights. It is in fact through the justification of the instrumental value of choice, of the objective worth of culture, and through the demonstration of cultural membership as a key element for the formation of one's choice that rights for cultural protection can be legitimised.<sup>30</sup> The question remains of whether these rights should be intended as collective or individual. Before engaging the arguments that protect the legal existence of cultural rights, it is vital to explain why choice is important in one's life.

### **1.3. Freedom of Choice and Its Implications.**

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<sup>29</sup> Barry, *Culture and Equality*, pp. 116-117.

<sup>30</sup> On the definition of 'objective value', see Christine M. Korsgaard, 'Two Distinctions in Goodness', *Philosophical Review*, 92, no. 2, (1983), pp. 181-182.

Choice represents the primary element through which individuals' basic liberties take form.<sup>31</sup> Through the exercise of free choice, people can express their own individuality and therefore achieve their ideal well-being.<sup>32</sup> This is the structure of the argument proposed by John Stuart Mill in defence of the instrumental worth of liberty for the achievement of the greater intrinsic value of individuality.<sup>33</sup> According to Mill, freedom of choice means ability to freely express oneself, to follow one's own plans of life and to associate with other fellow human beings following one's tastes and preferences.<sup>34</sup> As a consequence, freedom of choice is the opposite of any form of social or cultural assimilation, which instead wants to build individuals according to social customs and traditions. Against assimilation, Mill argues for free use of one's capacities of creation and reasoning, which is possible only if freedom of choice is granted.<sup>35</sup> Furthermore, according to Mill, freedom of choice is not limited to the private sphere, but it includes one's freedom to 'carry his opinions into practice at his own cost'.<sup>36</sup> This is achieved by the public promulgation and institutionalisation of practices, which can be recognised as worthy in the debate on social justice only if acted in the public social sphere. People should be free not only in making personal and original thoughts, but also in carrying these thoughts on into a concrete life plan.<sup>37</sup> In this sense, Mill demonstrates the value of free choice in planning one's life through the justification of freedom of thought.

The same argument used by Mill for legitimising one's freedom of planning one's own life could also be used for affirming that free choice is instrumentally valuable to the expression of one's identity (which represents an intrinsic value in itself). Saying that free choice enables one's individuality to be freely shaped implies affirming that freedom of choice is a necessary tool for the conceptualisation and the expression of one's individuality. It is now extremely

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<sup>31</sup> John S. Mill, *On liberty, in focus* (edited by John Gray and G. W. Smith, London: Routledge, 1991), p. 73.

<sup>32</sup> Mill, *On Liberty*, p. 73.

<sup>33</sup> Mill, *On Liberty*, pp. 71-73.

<sup>34</sup> Mill, *On Liberty*, p. 33.

<sup>35</sup> Mill, *On Liberty*, pp. 74-75.

<sup>36</sup> Mill, *On Liberty*, p. 72.

<sup>37</sup> Mill, *On Liberty*, p. 72.

important to answer three main questions: how do people come to the conceptualisation of their choices? How can they choose among the different options that are open to them? Which is the decisive element that makes them decide for either of the paths they can go through? The choice-making process has been the object of several interpretations. Competing arguments will now be considered in order to investigate the debate on this topic.

According to Mill, choices are the result of one's attitudes and tastes, which arise from the rational interpretation of one's experience.<sup>38</sup> Although the two notions of experience and culture have different meanings, they are not entirely detached. If experience can be defined as the past events encountered in life, culture is intended as the background context in which these experiences can be understood. Therefore, experience is always formed in a context of action, which in turn always refers to a cultural environment. In this sense, although these two notions have divergent meanings, a link is established between the two, in reference to one's attitude in making choices.

The connection between culture and choice represents the key point of the arguments advanced by multiculturalists and communitarians. Michael Sandel, in his criticism of Rawls's account of choice, affirms that two paths are open to an individual in the process of choice-making.<sup>39</sup> On the one hand, the individual properly chooses his ends (if they are not part of one's identity) as a consequence of an act of detachment of the ends from the self. On the other hand, if the ends that he wants to choose are instead part of his individuality, the individual does not choose them; rather he comes by his ends through an act of self-reflection in his *cognitive dimension*.<sup>40</sup> According to Sandel, in this second situation, the sources of one's ends cannot be chosen, because they arise from a personal understanding of the self.<sup>41</sup> Therefore, on his account choice is open for an individual only through an act of introspection and in the context of a framework of meaningful options.

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<sup>38</sup> Mill, *On Liberty*, pp. 74- 75.

<sup>39</sup> Michael Sandel, *Liberalism and the Limits of Justice* (Cambridge: Cambridge University Press, 1982), pp. 56-58.

<sup>40</sup> Sandel, *Liberalism and the Limits of Justice*, p. 58.

<sup>41</sup> Sandel, *Liberalism and the Limits of Justice*, p. 58.

Charles Taylor partly agrees with Sandel's perspective, although he particularly stresses the need of background conditions that make individual choices meaningful or even possible.<sup>42</sup> According to Taylor, individuals have to choose among the options that constitute the values of the *horizon* in which their culture is expressed.<sup>43</sup> Choices are therefore restricted to the limits established by the culture that constitute one's individuality. In this respect, according to Taylor there is no such thing as the choice of one's identity; instead, this process springs from the cultural group in which one was born and brought up.

In the name of the indiscernible link between identity and culture, any cultural group should, for Taylor, be recognised as independent and it should benefit from a right of autonomy. However, the discussion that Taylor undertakes focuses solely on Western cultures, in which the two *hypergoods* of autonomy and dignity of individuals represent accepted key points in the establishment of any social or institutional relationship.<sup>44</sup> By specifically referring to the Western culture, Taylor guarantees the coherence of a system that requires both recognition of groups as *horizons* and individuals as a subject deserving respect. Nonetheless, his account does not consider and even seems to protect those cultures that, in theory, promulgate the submission of women, the denial of homosexuality or include genital mutilation in their cultural practices. Taylor's account of *hypergoods* is thus ambiguous and dangerous to affirm as the result of a rational debate around the protection of any cultural group.

This outcome underlines that the notion of individuality must be kept as a fixed point in any discussion over the role of culture in the social realm. An opposite view would diminish the central element of respect for individuals that anyone must hold independently of any other value. This challenge is part of the liberal critique delivered to the communitarian overprotection of invasive practices legitimised in the name of the culture. Martha Nussbaum affirms that the accommodation of different religions, for example, can happen only if the

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<sup>42</sup> Charles Taylor, *The Ethics of Authenticity* (Cambridge, Mass.; London: Harvard University Press, c1991), pp. 38-39.

<sup>43</sup> Taylor, *The Ethics of Authenticity*, pp. 38-39.

<sup>44</sup> Taylor, *Sources of the Self*, p. 63.

members of the religious groups show respect for humans' central capabilities.<sup>45</sup> For Nussbaum, the categories of capabilities correspond to the basic requirements that make a life worth living;<sup>46</sup> therefore, the acceptance of cultural practices follows the assurance of the respect of the individual's autonomy and integrity.

Taylor does not underestimate the relevance that individual integrity holds in his portrait of cultural groups.<sup>47</sup> According to him, recognition rises primarily from those aspects that make a life worth living and that, in his opinion, are connected both to individuals as such and to their cultural groups. However, his account refers specifically to cultural groups rather than to individuals, because cultural membership is a good that is brought forward by a community of members rather than by a single individual. Although Taylor affirms that freedom and autonomy are important aspects to be enhanced in questions of social justice, they have to be intended as freedom and autonomy for individuals who are already part of a cultural *horizon* of reference.

Nonetheless, it seems unsustainable to justify that a group holds rights by departing from the acknowledgment of the status of groups as independent from its members, as Taylor tends to do. In contrast, this acknowledgment must rise from the recognition of individuals as necessary elements composing groups. Any justification of rights to individuals must therefore touch upon the centrality of individuality as a key point for holding any right of cultural protection.

In this sense, the view adopted here can be compared to the one adopted by Young, who, in *Justice and the Politics of Difference*, handles the topic of identity and affirms that stating that social groups determine individual identities is a dangerous threat to the enhancement of differences among people.<sup>48</sup> According to Young, theories of identity tend to homogenise individuals, by neutralizing differences under the same categorization instead of collaborating in their promulgation.<sup>49</sup> When involuntarily assimilated, people's individualities are

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<sup>45</sup> Nussbaum, *Women and Human Development*, p. 204.

<sup>46</sup> Nussbaum, *Women and Human Development*, p. 5.

<sup>47</sup> Taylor, *Sources of the Self*, pp. 14-15.

<sup>48</sup> Young, *Justice and the Politics of Difference*, pp. 98-99.

<sup>49</sup> In relation to Young's thought, the ideals of assimilation that she contrasts are those ideals that do not appreciate and accept differences between people, such as forms of cultural imperialism



deleted for the sake of promulgating the thought of the majority.

Young, therefore, does not embrace the view of many communitarian thinkers, such as Taylor, who identify social groups with small communities. According to Young, the attribution of fixed identities to individuals would lead 'to conceptualize entities in terms of substance rather than process or relation'.<sup>50</sup> Therefore, Young claims that the danger of talking in terms of identities is represented by the tendency to spread assimilation, which blurs differences among individuals and categorises them into formal identities.<sup>51</sup>

The positions exposed so far raise several questions: are people able to choose their ends without any background of values? Or, on a deeper level, is the mind a 'tabula rasa', not influenced by any antecedent belief arising from the traditional values inherited throughout time? The answer to these questions, which is analysed in the following chapter, will provide the starting point for the understanding of the role of culture in directing one's choices of life and its possible legal protection.

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(Young, *Justice and the Politics of Difference*, pp. 58-61) and 'assimilationist ideals' that do not enable people to keep their cultural expressions in the public sphere of a state (Young, *Justice and the Politics of Difference*, pp. 158-163).

<sup>50</sup> Young, *Justice and the Politics of Difference*, p. 98.

<sup>51</sup> For an extended perspective on the implications of the categorisation of individuals into identities, see Amartya Sen, *Identity and Violence: the Illusion of Destiny* (London: Allen Lane, 2006), pp. 1-17.

## Chapter II

### The Right of Cultural Membership

In the context of the debate proposed in the previous chapter, two major viewpoints can be underlined: the liberal and the communitarian perspectives. A more appealing intermediate position exists between the multicultural communitarian view that sees culture as the primary and essential element for one's choice and the liberal view that instead conceives free choice as the fundamental element for the expression of one's individuality and for the achievement of one's well-being. This position grants the value of free choice and shows that no choice toward the pursuit of one end rather than another can be made without a previous evaluation of preferences within one's cultural context.

#### 2.1. An Intermediate Position for Meaningful Choices.

Sandel's critique of the role of choice in Rawls's original position stresses the importance of the two notions of circumstances and prerequisites for the process of choice-making.<sup>52</sup> However, autonomy and freedom, in the context of individual identity, are the required instruments for self-understanding. What thinkers such as Sandel, Taylor and others<sup>53</sup> object to is that these aspects are strongly connected to the social context in which people grow up and to which they relate, evaluate and scrutinise their beliefs. According to these authors, any defence of the role of choice as the first element in the process of identity building implies the adoption of the 'naturalistic view', which affirms that the only common element that people share is their membership in the human race.<sup>54</sup> Culture shapes those moral attitudes and considerations on the good and bad that a person

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<sup>52</sup> For further reference on Sandel's account of the circumstances of choice, see Sandel, *Liberalism and the Limits of Justice*, p. 35. For further reference on Sandel's account of the pre-requirements for choice, see Sandel, *Liberalism and the Limits of Justice*, pp. 64-65.

<sup>53</sup> Bhikhu Parekh and Alasdair MacIntyre are among those authors that advance the position that individual identity is connected to the cultural background in which people live. For further reference, see Bhikhu Parekh, *Rethinking Multiculturalism: Cultural Diversity and Political Theory* (2nd ed., Basingstoke: Palgrave Macmillan, 2006), pp. 118-123; Alasdair MacIntyre, *After Virtue: A Study in Moral Theory* (Second corrected edition/with postscript, London: Duckworth, 1981), pp. 221-222.

<sup>54</sup> Parekh, *Rethinking Multiculturalism*, p. 127; Taylor, *Sources of the Self*, p. 31.

maintains since childhood. Choices, as long as they represent the external act of a deeper understanding of the self, will be in accordance with one's beliefs and therefore with one's culture. Two points of concern can here be levied against the possibility of free choice. First, do individuals choose in relation to the cultural context in which they are inevitably embedded? Second, is it possible to draw a space for the exercise of free choice?

Holding an intermediate position between liberals and communitarians requires a deep analysis on the sense of the expression 'meaningful choice'.<sup>55</sup> A choice is meaningful when it is consciously undertaken by an individual and it plays an important role in the planning of one's life. Thus, if it is justifiable to let the individual be free to express his convictions and affiliations to a culture, one should also be free to benefit from his right of exit and to leave the cultural group he belongs to.<sup>56</sup> In fact, it seems unsustainable to affirm that one can choose outside the cultural context, as long as each choice that one makes is linked to a cultural aspect.<sup>57</sup> Choices can be made only by selecting one of the options that are at stake, i.e. one of the cultures that are available. Therefore, in this context, choice is always linked to the agreement (or disagreement) with the constitutive elements of a particular culture.

It thus seems that to affirm both that meaningful choices are only linked to the cultural context in which one belongs and that there is no such right to exit from a group results in a restrictive and illiberal view, and consequently in assimilation.<sup>58</sup> Hence, another important aspect connected to the notion of meaningful choices must also be the voluntary acceptance of the context required

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<sup>55</sup> The expression 'meaningful choice' refers to choices that are made in a state of consciousness and that play a constitutive role in the shaping of one's life. For further reference, see Kymlicka, *Multicultural Citizenship: a Liberal Theory of Minority Rights* (Oxford: Oxford University Press, 1996), pp. 82-84 and Taylor, *Sources of the Self*, pp. 8-9, p.57.

<sup>56</sup> This concept represents the principle of freedom to exit from the any form of social affiliation; for further reference, see Chandran Kukathas, 'Are There Any Cultural Rights?', *Political Theory*, Vol. 20, No. 1 (Feb. 1992), p. 128.

<sup>57</sup> The tight connection between choices and culture is underlined by the communitarian stream of thought. For further reference, see Kymlicka's definition of 'societal cultures', in Kymlicka, *Multicultural Citizenship*, pp. 75-.106, in particular pp. 82-93. Furthermore, this view implies the adoption of a universalistic approach that sees each cultural expression and affiliation as the constitution of a cultural group, as analysed in the section 1.2.

<sup>58</sup> Mill, *On Liberty*, p. 89.

by the choice. In this respect, the individual freely directs his thoughts and beliefs toward the cultural group that best represents them. Prohibiting the choice of a cultural affiliation in relation to one's individuality would mean denying one's freedom of thought and expression.

Hence, two elements are involved in the definition of meaningful choice: (1) freedom of choice; (2) actual options of choice (which imply the need of protecting all cultural groups that promote the well-being of their members). From the acknowledgment of these two elements, it can be affirmed that culture holds both an objective and an instrumental value as it constitutes the context of actual options of choice that enables the realisation of the higher value of freedom of choice.<sup>59</sup> In order to explain this position, an analysis of the connection between the values of culture and of choice will be undertaken.

## 2.2. Which Value for Culture?

Freedom of choice (or freedom of making meaningful choices) is universally conceived as an intrinsically valuable principle according to both the liberal and the communitarian thesis. People ought to be free to choose those values and goals that are important for their lives and to decide which paths to undertake for their achievement.<sup>60</sup> Affirming that something holds an intrinsic value means that it has goodness in itself and that it does not acquire its value from anything else.<sup>61</sup> In modern times, several philosophical perspectives have brought too much confusion to the two notions of 'intrinsic value' and 'value for its own sake', the latter of which refers to the value that a thing holds for being an end in itself.<sup>62</sup> It is important to keep these two notions separate, in order to avoid misunderstanding on the topic and to accord the correct value to culture.

On many perspectives, among which Will Kymlicka's position plays a primary role, freedom of shaping one's own life constitutes an end in itself and

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<sup>59</sup> Korsgaard, 'Two Distinctions in Goodness', pp. 181-182.

<sup>60</sup> Mill, *On Liberty*, pp. 72-73.

<sup>61</sup> Korsgaard, 'Two Distinctions in Goodness', p. 170.

<sup>62</sup> Korsgaard, 'Two Distinctions in Goodness'. An example of a misinterpretation of 'intrinsic value' and value for its own sake' is represented by John O'Neill, 'The Varieties of Intrinsic Value', in Andrew Light and Holmes Rolston, *Environmental Ethics: an Anthology* (Blackwell, 2003), pp. 131-132.

therefore it is highly valuable.<sup>63</sup> Rawls accords extreme importance on the value of freedom of advancing life plans and affirms that '[...] the worth of liberty to persons and groups depends upon their capacity to advance their ends within the framework the system defines'.<sup>64</sup> However, it remains unclear whether culture holds intrinsic or extrinsic value and whether it is an end in itself or a means for the realisation of a higher end.<sup>65</sup>

Any position that would attribute an intrinsic value to culture should be able to affirm that culture is a good in itself and that this is true independent of any contextual condition in which it is embedded.<sup>66</sup> It should therefore demonstrate what George E. Moore names the 'method of isolation', which argues that for a good to be intrinsically valuable, it must preserve its value even if detached from any other value.<sup>67</sup> Culture, for its own constitutive features, is a continuous movable element, which evolves with the society throughout time. Therefore, it cannot be affirmed that culture can hold any intrinsic value as it does not represent a fixed identical good at all times. Furthermore, something is intrinsically valuable only if independent of anyone's desires and interests.<sup>68</sup> Hence, the possibility of affirming that individuals hold an interest in the preservation of their culture, does not imply that culture is good in itself. This is true for two reasons. First, cultural worth must not rely on external relations; second, the value that members accord to their culture 'varies with the circumstances in which the thing [to be valued] is found'.<sup>69</sup>

Following a theory that intends extrinsic value as a value derived from other sources, the logical connection that has been drawn between culture and the value of free choice in life planning opens a possibility for culture to hold an extrinsic value, in that it does not represent a good for itself but in relation to the good of something else that is intrinsically valuable. In this respect, the position that sees

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<sup>63</sup> Kymlicka, *Multicultural Citizenship*, pp. 80-82.

<sup>64</sup> Rawls, *A Theory of Justice*, p. 179.

<sup>65</sup> For a discussion over the distinction of values, see Korsgaard, 'Two Distinctions in Goodness'.

<sup>66</sup> Korsgaard, 'Two Distinctions in Goodness', p. 175.

<sup>67</sup> George E. Moore, *Principia Ethica* (Cambridge: University Press, 1903), pp. 93-94 and pp. 187-188. Reference extracted from Korsgaard, 'Two Distinctions in Goodness', pp. 175-176.

<sup>68</sup> Korsgaard, 'Two Distinctions in Goodness', p. 175.

<sup>69</sup> Korsgaard, 'Two Distinctions in Goodness', p. 175.

culture as the condition for the realisation of the highest value of freedom of choice can legitimately be held in light of the fact that different cultures represent the actual options available to be chosen. Culture represents a channel through which people plan their lives, insofar as culture synthesises a set of values and beliefs for the promotion of the lives of its members. However, what is important to highlight is that culture does not just represent ‘one’ channel, but rather it constitutes ‘the’ necessary condition for the application of intrinsic value of freedom of choice.<sup>70</sup> Without cultural reference, people would not be able to give meaning to their lives, as they would lack those necessary directions for formulating choices of intrinsic worth.<sup>71</sup> Hence, culture represents one of the constitutive conditions for meaningful choices to be made, as it provides the background for the evaluation of one’s thoughts and beliefs and for the realisation of one’s life plans.

Additionally, it would be disrespectful to degrade the role of culture to a means for the realisation of an intrinsic good. Although a thing does not hold an intrinsic value, it does not mean that it can only be an instrument for the achievement of a higher value. This is because culture is the necessary condition for meaningful choices to be conceptualised. Rational choice holds a value in itself, in that it represents a good that is not related to any spatial or temporal circumstance. For example, the value of the ‘good will’ holds intrinsic worth, as it represents the power of making meaningful choices common to all rational human beings.<sup>72</sup> Thus, an extrinsic value refers to some relations or conditions that its holder must have in order to be considered valuable. A condition of this kind is therefore constituted by culture, which represents the relevant requirement for the realisation of one’s ‘good will’. Culture, as previously underlined, is the framework in which choices are made and in which one’s freedom of choice can be entirely realised. It can thus be argued that culture is instrumentally valuable

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<sup>70</sup> Denise G. Réaume, ‘Official Language Rights: Intrinsic Value and the Protection of Difference’, in Will Kymlicka and Norman Wayne, *Citizenship in Diverse Societies* (Oxford, Oxford University Press, 2000), p. 246.

<sup>71</sup> For an extended perspective on the topic of culture as constitutive element for the attribution of value, see Taylor, *Sources of the Self*, p. 57.

<sup>72</sup> Korsgaard, ‘Two Distinctions in Goodness’, p. 178.

or, in the Kantian lexicon, that it is objectively good.<sup>73</sup> This is because it is conditionally valuable to the realisation of some circumstances, such as the fact that it enables meaningful choices to be actualised.<sup>74</sup> The statement of the objective good of culture is of particular importance because:

‘[...] it allows us to say of certain things that they are valuable only under certain circumstances, or valuable only when certain other things are true or present, without forcing us to say that these kinds of things must be valuable merely as instruments’.<sup>75</sup>

In these lines, Christine Korsgaard illustrates the fundamental worth of those elements that contribute to establish the intrinsic worth of high values. Culture can be included among these elements and its value cannot be degraded to be simply instrumental for the realisation of choice.

### **2.3. Cultural Rights: Cultural Membership as a Primary Good.**

Having stated that culture is objectively valuable and that it ought to be evaluated through an intermediate position that sees the individual as free, the discussion turns now to the possibility of culture to be protected by any form of right. Can cultural rights be justified through the statement of the objective value of culture? To assert that the objective value of culture is sufficient to generate cultural rights, it should be demonstrated that, in principle, any objective value sufficiently justifies the generation of a right. In order to provide an answer to this challenge, a comparison will be set between the two notions of cultural membership and primary goods.<sup>76</sup> This connection has already been set by Kymlicka, who draws a link between Rawls’s list of primary goods and the worth of cultural

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<sup>73</sup> Korsgaard argues that for Kant, an objective good is the good that a thing has if implied in the process of the realisation of an intrinsic good. For reference, see Korsgaard, ‘Two Distinctions in goodness’, p. 181.

<sup>74</sup> Korsgaard, ‘Two Distinctions in Goodness’, p. 182.

<sup>75</sup> Korsgaard, ‘Two Distinctions in Goodness’, p. 192.

<sup>76</sup> Rawls, *A Theory of Justice*, pp. 54, 78-81.

membership.<sup>77</sup> Kymlicka's argument is particularly convincing and it is highly relevant in stressing the importance of cultural membership in the realm of liberalism.

Rawls names primary goods as those goods that any individual has reason to want independently of her contingent ends.<sup>78</sup> He lists them as those 'rights, liberties, and opportunities, and income and wealth' that any rational individual wants to be preserved in her life.<sup>79</sup> Therefore, primary goods are those 'preconditions' that assure the pursuit of one's life plans, i.e. those necessary elements that an individual should benefit from in order to be in an equal position to pursue her ends as anyone else in the society.<sup>80</sup> For example, self-respect is included by Rawls as a fundamental precondition for the enjoyment of any good, because it represents the necessary requirement for making any life plan that holds a value for the individual.<sup>81</sup> Therefore, without self-respect choices could not even be conceptualised because the individual would not be able to recognise the value of her being and of her projects.<sup>82</sup>

The justification for ascribing the notion of cultural membership as a primary good ought to rely on the reasons that individuals have to want their cultural membership preserved independently of any contingent end. Furthermore, cultural membership ought to be an instrument aimed at guaranteeing the preservation of the principle of fairness for an egalitarian society.

Positing cultural membership as a primary good, however, does not imply saying that members ought to remain loyal to the group no matter what the decisions of the cultural group are. Cultural membership is not irreversible. If the cultural group adopts practices that are disrespectful of individuals' dignity and integrity, then the individuals have justifiable reasons for claiming the right to exit the group that they are affiliated with. Therefore, people have reason to want

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<sup>77</sup> Kymlicka, *Liberalism, Community and Culture*, pp. 162-167.

<sup>78</sup> Rawls, *A Theory of Justice*, pp. 79-80.

<sup>79</sup> Rawls, *A Theory of Justice*, p. 79.

<sup>80</sup> Kymlicka, *Liberalism, Community and Culture*, p. 164. For further reference on Rawls's text, see, Rawls, *A Theory of Justice*, pp. 80-81 and pp. 214-215.

<sup>81</sup> Rawls, *A Theory of Justice*, pp. 155-156 and p. 386.

<sup>82</sup> For further references on the notion of self-respect connected to the development of individuality, see Mill, *On Liberty*, p. 79.



cultural membership to be a primary good, as long as it represents the necessary tool for the conceptualisation of meaningful choices and for the planning of one's life. However, they also have the right to exit the group they are members of, whether or not circumstances require it. It seems that an inconsistency may occur between the need to establish cultural membership as a primary good and the need to establish a right to renounce the membership of this primary good. A possible criticism on this position could affirm that a right to exit from the group undermines the legitimacy of cultural membership as a necessary primary good, as long as people have reasons to benefit from the possibility to leave the cultural collective they live in.

A defence for the statement of cultural membership as a primary good, or in other words, as a right to the preservation of one's culture, must touch upon two aspects: (1) the fundamental importance that cultural membership holds for any individual; (2) the costs implied in the act of leaving one's cultural group. Cultural membership is a basic element in one's life, as it actualises those fundamental channels for the capability of making meaningful choices. Joining a cultural group therefore requires agreeing to those directions that are put forward by a culture and to make them part of one's self. Culture, in this sense, makes sense of one's identity, in that it offers the possibility of realising one's self in the social context, because it provides the space in which identity develops. In this sense, the role that cultural groups hold for one's self can be appreciated, as they preserve the cultural environment in which individuals' meaningful choices can be actualised.

The costs of changing one's identity are not to be underestimated. Cultural membership is a symbol of the expression of the traits of one's identity; hence, it deals with the fundamental being of an individual and to her rational capacities of choice and plan making.<sup>83</sup> Leaving the group of affiliation sometimes requires paying a high cost in return, as it necessitates changing some parts of one's identity that are fundamental to the individual. In order to elucidate the depth of

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<sup>83</sup> See discussion over the costs involved in the changing of identity, Kymlicka, *Multicultural Citizenship*, pp. 89-90; Kymlicka, 'Individual and Community Rights', in Judith Baker (ed.), *Group Rights* (Toronto, London: University of Toronto Press, 1994), p. 25.

this cost, some examples will be used, which stress three of the elements that represent the more basic components and fundamental functions of the individual in relation with cultural membership. These elements are respectively: (a) language; (b) religion; (c) rites and traditions. By elucidating these aspects, the importance of the affiliation to a cultural group will be shown, which will lead to the clarification of the status of cultural membership as a primary good.

(a) For the first example, suppose that *A* is a member of cultural group *X* that has the peculiarity of using a different language from the official language publicly adopted by the members of the majority culture of a state.<sup>84</sup> In this example, if *A* chooses to be a member of the culture that *X* brings forward, it means that he is ready to use *X*'s language and all its correlative aspects, such as idioms, cultural and under textual references. However, usually people do not explicitly choose to join a culture (although in some cases this may occur), rather they have been influenced in their upbringing by the culture their parents have chosen or inherited from their ancestors. Changing cultural groups, in this sense, requires having to learn another language, other idioms and other cultural references that constitute the linguistic realm of a particular culture. Hence, in this circumstance, for *A* to leave his cultural group *X* exacts a very high cost, incurred by the necessity of learning another language and assimilating his identity to a new linguistic culture. Consequently, this change implies a loss in the cultural references that are part of *A*'s identity and that represent the fundamental traits of his character. This example elucidates how difficult it could be to choose to leave one's cultural group. Renouncing one's cultural membership is therefore not an arbitrary choice, rather it implies renouncing a fundamental part of one's self, such as one's first language.

(b) For the second example, suppose that *A* is a member of cultural group *Y* that is a separate religious minority. Her being part of that cultural group is

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<sup>84</sup> It is the case, for example, of Quebecers in Canada, who represent a distinguishable cultural group in relation to the use of French as communicative language in the Anglophone state of Canada.

constituted by the acceptance and practice of those rituals that constitute her religion. A's ordinary day is thus composed of the practices that are linked to her religion. In addition, her religious affiliation also symbolises a series of values and beliefs that A intimately follows and that constitute the lenses through which she articulates her life. Her cultural membership, therefore, symbolises a part of her identity, which could be of more or less relevance according to the contingent situation in which A finds herself in her life. Thus, leaving the cultural group A is member of means overcoming the difficulty of renouncing the part of her identity that is linked to her religious credo. The cost of refusing her religious affiliation must therefore be taken into account by A at the moment of choosing to benefit from her right to exit from the group. Thus, even though a right to leave the cultural group must be taken for granted in order to avoid dictatorial behaviours of the group toward its members, it must be borne in mind that the costs associated with the exit from a cultural group are very high for any individual. In fact, they require abandoning a part of one's true identity and denying the liberty of making choices full of meaning for one's life.

- (c) For the third example, A is a member of cultural group Z that has the specificity of being a minority group in a larger state, where the culture of the majority is different from the culture that is brought forward in the context of the group Z. Therefore, the secular rites and traditions that the members of Z advance are not those endorsed by the majority. In this scenario, A (and with him all the members of Z) finds himself in a condition of disadvantage regarding the possibilities that he has of practicing those rituals that are part of the culture of his group not only in the private, but also in the public sphere.<sup>85</sup> This is because the state in question does not provide any particular protection for the public

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<sup>85</sup> This requires the inclusion of Z's practices in the institutional system set by the majority culture. The public element of these rituals is highly important to secure recognition. If practices are not institutionalised, they may cause disadvantages, as they are not properly considered in the evaluation of social justice related to cultural issues.

expression of other cultures in the social sphere. This does not mean that these cultures are openly discriminated against, but only that unequal attention is given to guaranteeing fair opportunities available for A as for a member of the majority culture. A simple, however discriminatory, solution to this problem is provided by A's right to exit from Z for joining the group that expresses the majority culture. Nevertheless, this operation would force A to realise himself in an environment that is not the one that reflects his identity, but in one that is foreign to his self and his life plans. Once again, the costs of exit from Z that A has to face are extremely high: they include having to reorganise one's primary life plans in a different context, which promotes traditions and beliefs that are different from the ones in which A relies on. In addition, the reason that supports A's exit from Z is only sustained as a consequence of a disadvantage that A has to face as member of a culture that is in minority in relation to a wider cultural context.

The analysis of these three examples demonstrates that the costs that members of cultural groups have to pay for exiting from their cultural group of reference are extremely demanding as they require the modification of one's identity and aspirations. Therefore, even though any theory that supports the centrality of the individual must take into account a right for members to leave their cultural affiliation, this does not mean that exercising this right is an easy decision. Changing cultural membership involves a high level of compromises for an individual, which inevitably disrupts the constitutive and fundamental traits of one's identity and ability to make meaningful and genuine life plans. Therefore, the two rights of protection of culture, namely the statement of cultural membership as a primary good, and of exit from one's cultural group are not in contradiction; they represent two options for two different sets of situations. In fact, the right to exit from a cultural group is usually not enjoyed by members unless the group takes advantage of them, or the members of the group in question are in a condition of disadvantage in relation to the members of the majority group. In the case that a group adopts an authoritative behaviour against the well-

being of its members, the position of a right of exit from a cultural group guarantees the inefficacy of this behaviour. Whereas, in the second case, the condition of disadvantage as a reason for leaving a culture constitutes a situation that supports the claim for the legitimacy of individual rights for cultural protection.

#### 2.4. Cultural Rights, for Whom?

Now, it has already been shown that culture holds an objective value, in that voluntarily belonging to a cultural group enables meaningful choice to be made. Cultural membership as primary good constitutes a precondition for any choice to be conceptualised, as culture supplies the context in which choices are made.<sup>86</sup> More specifically, culture is not just a channel for articulating meaningful choices, but it is the fundamental condition for choices to be made.<sup>87</sup> In this sense, culture is the grounds for the understanding of the meaning of choices, in that it provides a content from which people can make choices for their plans of life. Just as rights, liberties, opportunities, income and wealth are the primary goods that one has reason to want independently of any contingent end,<sup>88</sup> cultural membership is also such a primary good necessary for making meaningful choices. This allows individuals to choose their directions and shape their lives towards the accomplishment of some values and beliefs.<sup>89</sup> Incidentally, one could acknowledge the necessary status of primary goods for cultural membership through justice as recognition rather than as distribution.<sup>90</sup>

Comparing cultural membership with primary goods entails focusing on the centrality of the individual as a cultural member rather than on the centrality of the group as a presumed entity. The justification of potential cultural rights must therefore rely upon the individual as right-bearer rather than upon the cultural group: this is because culture is valuable only in relation to the single

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<sup>86</sup> Kymlicka, *Liberalism, Community and Culture*, p. 166.

<sup>87</sup> Réaume, 'Official Language Rights: Intrinsic Value and the Protection of Difference', p. 247.

<sup>88</sup> Rawls, *A Theory of Justice*, p. 79.

<sup>89</sup> Kymlicka, *Liberalism, Community and Culture*, p. 165.

<sup>90</sup> Rawls's list of primary goods does not take into account those features that refer to the recognition of social forces in the social realm, which, as demonstrated in the previous chapter, thoroughly influence distributive issues.

individual, which is the fundamental component of the culture. In order to elucidate this point, a comparison between the position that intends cultural membership as a primary good and Taylor's communitarian thought will be set.<sup>91</sup> For the purpose of this comparison, Taylor's position on the foundation of culture as a *horizon* of choice will be challenged to justify the worth of culture on an individual basis.<sup>92</sup>

#### 2.4.1. Taylor's Notion of Horizon.

Taylor's definition of *horizon* refers to a cultural background that is constitutive of one's identity. According to this position, individuals are dialogical beings, who develop linguistic and original thoughts in relation to their referential cultural context.<sup>93</sup> Culture is therefore intended in terms of a *horizon* of commonality and it can be actualised only in relation to the cultural group of reference. Taylor's account of *horizon* addresses a fixed concept of culture, which represents the element of commonality between members of a same cultural group. Self-determining freedom is therefore linked to a prior conceptualisation of the individual in the context of the cultural *horizon* he belongs to. Hence, according to Taylor, individual identity and the *horizon* of culture are two indiscernible concepts.

Under this conception, choice plays only a side role in issue of self-identity, as, for Taylor, identity can only be 'discovered', not chosen.<sup>94</sup> This position holds that the group (intended as an entity independent of its members), not the culture, is the framework of choice. It thus legitimises decisions that the group may undertake against the well-being of some of the group's members. This definition of *horizon* seems to intend a personification of groups with a sort of overall legislator, similar to the Hobbesian Leviathan, which decides which options are open to the members for the conceptualisation of their beliefs and the

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<sup>91</sup> Kymlicka, *Liberalism, Community and Culture*, §8, pp. 162-181.

<sup>92</sup> Taylor, *The Ethics of Authenticity*, §4, in particular pp. 38-39.

<sup>93</sup> In this context, Taylor does not intend language only as a communicative tool, but also as the expression of cultural practices and beliefs. For further reference, see Taylor, *The Ethics of Authenticity*, p. 33.

<sup>94</sup> Taylor, *The Ethics of Authenticity*, p. 39.

planning of their lives. The notion of *horizon* tends therefore to restrict the freedom of choice that is open to all individuals; particularly, it restricts their possibility to exit or enter the cultural group. It seems in fact that the group conclusively forges members' identities, which acquire their meaning only in the relation to existence of the group. According to Taylor:

‘[...] I can define my identity only against the background of things that matter. [...] Only if I exist in a world in which history, or the demands of nature, or the needs of my fellow human beings, or the duties of citizenship, or the call of God, or something else of this order *matters* crucially, can I define an identity for myself that is not trivial’.<sup>95</sup>

Taylor's account is subject to several criticisms. First, the notion of *horizon* appears to be too restrictive for one's ability to make meaningful choices. In fact, Taylor's position does not acknowledge the need for freedom of choice, which is a fundamental condition, along with the cultural background, to consciously articulate meaningful decisions. Although Taylor acknowledges the notion of self-determining freedom, his account fails because it neglects the fundamental role that free choice has in the formation of one's individuality.<sup>96</sup> This criticism is not intended to undermine the importance of a cultural background for the act of choice-making. In contrast, having a cultural *horizon* is fundamental for this process, but it must be accompanied by its counterpart, i.e. freedom of choice (point (1) of the definition of meaningful choices previously provided). The opposite view would result in a process of forced assimilation to common thoughts and opinions deemed proper by the dominant culture.

Second, if the same procedure for the denial of the individual freedom of choice is applied to cultural groups, an act of assimilation of the minorities to the majority would be inevitable. Therefore, Taylor's argument is self-invalidating, as

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<sup>95</sup> Taylor, *The Ethics of Authenticity*, pp. 40-41.

<sup>96</sup> For further reference on this point, see Mill, *On Liberty*, p. 74.

its application on other levels undermines the spirit of the conclusion that it aims to achieve.

Third, Taylor's position suggests that there must be a distinction between different kinds of cultures and that only those cultures that promote values such as the respect of nature and of individuals, the respect for the common life and for any religious affiliation, can be considered as valid *horizons* for one's choice.<sup>97</sup> It seems that the articulation of this thought affirms a form of superiority of those cultures that correspond to this restricted range of values and undermines any other cultural context in which these kinds of beliefs are not promoted, even if these cultures contribute to the well-being of their members and are valuable for them.

In contrast to Taylor's account of *horizon*, the application of the notion of cultural membership as a primary good for individuals introduces numerous benefits. In the first place, the individualistic perspective would guarantee freedom for individuals to join or leave cultural groups and to embrace other expressions of value and of life. This would also enable them to pursue one's individuality in its entirety, without being forced to be subject to practices that deny the human worth (among these practices, we can classify genital mutilation, marginalisation of homosexuals, and so on). Replacing the notion of cultural group with an individualistic perspective on cultural membership forbids the conceptualisation and the application of any form of repression. In this scenario, individuals would be able to freely choose and plan their lives, without relying on a concept of culture that blocks their evolution in history. There is no moral imperative that does not allow cultures to regularly amend; the contrary would impede the development of progress and creativity. In addition, the secularisation of cultural groups would exacerbate the differences among people and their social status, without enabling people to rescue their lives and their reputation from those stereotypes held in the course of the history.<sup>98</sup>

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<sup>97</sup> Taylor, *The Ethics of Authenticity*, p. 41.

<sup>98</sup> For further reference, see Barry, *Culture and Equality*, pp. 116-117.



#### 2.4.2. *Individual Cultural Rights.*

Turning now to the topic of whether rights can be attributed in relation to culture, it is important to understand who the bearers of these rights are. Cultural rights are assured by the objective value of culture and the affirmation of the primary good of cultural membership. However, stating that culture holds an objective worth, which is necessarily connected to one's ability to make meaningful choices, does not necessitate attributing the same worth to cultural groups. Although culture is enhanced and promoted by collective practices, this does not mean that collectives can hold the same value that these practices have in relation to the individuals that promote them. Further, arguing that cultural rights can be justified from a collective point of view demands certain limitations.

In his criticism against the notion of collective rights, Michael Hartney affirms that the logical argument supporting the legitimacy of collective rights begins by stating the value of communities and their need of being protected, for indiscriminately concluding that rights must be accorded to communities according to these premises.<sup>99</sup> Hartney's challenge primarily attacks the conclusion of this syllogism and asserts that the structure of this argument is inconsistent for two reasons. First, it does not distinguish between the moral and the legal aspect of rights and equalizes them under the same category. Second, it falsely affirms that communities can have rights.<sup>100</sup> Hartney's justification of instituting individual rights refers to the fact that the interest in justifying a right is never collective but always individual.<sup>101</sup> He asserts that '[...] not all goods (or interests) generate rights; only those which are central to the well-being of individuals do so'.<sup>102</sup>

The attribution of the notion of primary goods to cultural membership refers specifically to individuals rather than groups; therefore, it does not imply any justification of cultural rights from a collective point of view. The explanation of the reasons that support this statement will be endorsed by acknowledging the

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<sup>99</sup> Michael Hartney, 'Some Confusions Concerning Collective Rights', in Will Kymlicka, *The Rights of Minority Cultures* (Oxford: Oxford University Press, 1995), p. 203.

<sup>100</sup> Hartney, 'Some Confusions Concerning Collective Rights', p. 203.

<sup>101</sup> Hartney, 'Some confusions Concerning Collective Rights', p. 212.

<sup>102</sup> Hartney, 'Some confusions Concerning Collective Rights', p. 212.

arguments behind some positions that instead support collective cultural rights. In particular Peter Jones's and Joseph Raz's perspectives on collective rights will be examined.<sup>103</sup>

Jones proposes an argument that supports collective rights as the result of the sum of individuals' interests, whether these interests alone would not be sufficient to generate rights for their protection.<sup>104</sup> In other words, according to Jones, it is possible to justify collective rights in that they promote a collective interest produced by the basic needs of individuals. A position similar to Jones's is advanced in Raz's articulation of the notion of collective rights.<sup>105</sup> According to Raz, it is possible to talk about collective rights in view of their emergence from individuals' shared interests.<sup>106</sup> The generation of a right to protect collective interests must be justified by a greater advantage for the bearer of the right than for the holder of the corresponding duty to be subject of the duty.<sup>107</sup> According to Raz, the acknowledgment of a people's interest is a sufficient reason for the justification of holding a collective right.<sup>108</sup> A collective interest generates the attribution of a collective right as long as three fundamental conditions are satisfied. First, the interest must arise from an individual. Second, the individual in question must be a member of a group and its interest must be beneficial for the whole community. Third, the individual's interest alone is not enough to justify other people to hold a duty for its protection.<sup>109</sup>

These positions are subject to challenging criticisms. David Miller points out that Raz's position fails to invoke a justification of collective rights as rights that arise from the sum of the interests of the members of a group.<sup>110</sup> Miller underlines that collective rights are not sustainable: the justification of collective rights fails because it does not provide enough support to the justification of the

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<sup>103</sup> Peter Jones, 'Human Rights, Group Rights and People's Rights', *Human Rights Quarterly*, 21.1, (1999), pp. 80-107; Joseph Raz, *The Morality of Freedom* (Oxford: Clarendon Press, 1986).

<sup>104</sup> Jones, 'Human Rights, Group Rights and People's Rights', p. 84.

<sup>105</sup> Joseph Raz, *The Morality of Freedom* (Oxford: Clarendon Press, 1986), pp. 207-209.

<sup>106</sup> Raz, *The Morality of Freedom*, p. 208.

<sup>107</sup> Kymlicka, *Multicultural Citizenship*, p. 109.

<sup>108</sup> Raz, *The Morality of Freedom*, p. 208.

<sup>109</sup> Raz, *The Morality of Freedom*, p. 208.

<sup>110</sup> David Miller, 'Group Rights, Human Rights and Citizenship', *European Journal of Philosophy*, 10:2 (2002), p. 185.

collective status of the rights in question.<sup>111</sup> This is the reason why Miller argues that Raz's collective rights can only be instrumentally justified, in that they produce the well-being of individuals, but not of the group itself.<sup>112</sup> For this reason, Miller prefers identifying collective rights as rights of citizenship, which are less demanding than moral or human rights for groups. In fact, rights of citizenship do not apply to a status above and beyond any contingent situation; they are instead conceived as fundamental elements for a specific society.<sup>113</sup> Miller's conclusion affirms that group rights are legitimated only if they claim equal treatment of individuals in the society, but not if they want to deliver any fundamental status independent of the context in which they are invoked.<sup>114</sup>

Miller's criticism of Raz's position (and thereby of Jones's argument for collective rights) provides a good explanation of the reason it is unsustainable to justify cultural rights from a collective point of view. Although cultural practices survive through collective actions, these actions are intended for the supply of a combination of individuals' interests. Collectives always depend on the members that compose them and it would be odd to assert that there is such a metaphysical entity as the cultural group, which can make decisions about members' lives without their consent.<sup>115</sup> This situation would contradict the principle of freedom of choice, which, as previously defended, is intrinsically valuable for anyone's life. Hence, as long as cultural practices are held by individuals in community, all justification for the preservation of these practices through rights must rely upon individuals, which represent the main focal point of any cultural community.

Although groups are highly relevant in issues of social justice, they cannot hold any right for the protection of a culture. Affirming that groups cannot be bearers of rights does not imply that they cannot require duties for their

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<sup>111</sup> Miller, 'Group Rights, Human Rights and Citizenship', p. 185.

<sup>112</sup> Miller, 'Group Rights, Human Rights and Citizenship', p. 185.

<sup>113</sup> Miller, 'Group Rights, Human Rights and Citizenship', p. 188.

<sup>114</sup> Miller, 'Group Rights, Human Rights and Citizenship', p. 192.

<sup>115</sup> Jones nevertheless agrees with this statement and affirms that '[...] the collective conception does not require us to give a moral standing to the group that is separate from the moral standing of each of its individual members. The moral standing necessary for any claim of right is provided by the moral standing of the several individuals who make up the group. In the collective conception, the group *qua* group has no standing that is not reducible to the moral standing of its members' (Jones, 'Human Rights, Group Rights, and People's Rights, p. 85).

protection. In this respect, the notion of interest plays a fundamental role for the justification of the duty to protect cultural groups and for according groups the proper place in any fruitful discussion over social justice.

## **2.5. Duties for the Protection of Culture: Who is the Holder?**

To claim that an individual has an interest in the protection of a basic good requires that someone else ought to hold a duty for its protection (however, this does not require a right for its claimant).<sup>116</sup> For example, the absence of sufficient food to live entails a moral duty to provide food for one's subsistence. The interest of sustaining life is therefore at the source of the duty to provide food. In contrast, the interest of eating more and healthier (in a situation in which the claimer has already enough food to live) does not entail a duty to provide a higher quantity and quality of food, because this interest does not touch upon a basic human need.

‘Goods (or interests) may generate duties (e.g., of protection) but these duties do not correlate with rights, unless there is some special reason for protecting these goods’.<sup>117</sup>

If this argument concerning the possession of food is replaced with the same argument for the possession of those conditions for one's possibility of choice, it becomes possible to assert that members' interest in the protection of their culture generates a duty of the society to protect cultures that are in minority and in disadvantage, given that cultural membership represents a primary good for all individuals. As long as members of minorities cannot benefit from those circumstances that enable them to enjoy their basic rights of non-discrimination, equal opportunities and cultural preservation, members' interest in their

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<sup>116</sup> Hartney, ‘Some Confusions Concerning Collective Rights’, p. 212. On the justification of the attribution of moral rights, see Herbert L. Hart, ‘Are There any Natural Rights?’, *The Philosophical Review* (Vol. 64, No. 2, Apr., 1955), p. 178.

<sup>117</sup> Hartney, ‘Some Confusions Concerning Collective Rights’, p. 212.

achievement justifies a duty from the society to undertake those solutions that guarantee the preservation of these goods.

It is possible to argue that, at the individual level, these duties also generate rights of cultural membership, because the affiliation with a cultural group represents a primary good that all individuals have reason to enjoy. However, this justification cannot be applied to the collective level, insofar as the existence of a group depends on the individuals that compose them. Nevertheless, the society holds a duty toward groups for cultural respect and equal treatment. The acknowledgment of the disadvantage that members of minority cultures face in relation to members of the majority culture is possible only if one embraces a collective point of view. This act enables the disadvantaged members of the society to garner the strength necessary to create a societal duty to restore equal treatment through special policies. Therefore, the collective dimension of culture gives the ground for the acknowledgment of equal treatment for members of different cultural groups, and consequently supports the urgent need to restore this disadvantage. This aspect is important for supporting the discussion on capabilities for cultural groups undertaken in Chapter III.

In order to strengthen the assumption of individual rights of cultural preservation, it is fundamental at this stage to highlight several features in relation to the bearers of the correlative duties and to the nature of the rights in question. In fact, it is not yet clear who is the bearer of the duties who ought to undertake positive actions for the right to preserve cultural membership. In addition, it is also obscure whether these rights should be intended in their negative or positive form, i.e. if they should be conceived in terms of liberties or if actions for their protection must be undertaken by a specific agent. The answers to these questions will help to understand the position and the role that rights for cultural protection play.

Cécile Fabre's *complementarity thesis* will support the assumption that defends positive rights for cultural protection.<sup>118</sup> The argument Fabre proposes to

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<sup>118</sup> Cécile Fabre, *Social Rights under Constitution: Government and the Decent Life* (Oxford, Oxford Clarendon Press, 2000), p. 47.

breaks the classical thought that distinguishes civil and political rights as negative, and social rights as positive (and therefore for the justification of positive civil and political rights) will represent the benchmarks that will justify the statement of positive individual rights of cultural protection.<sup>119</sup> This argument will help to identify the state as the bearer of the duties involved in rights of cultural membership. The claims advanced in the following argument refer to the aspects connected to the publicity of cultural membership and to the unfairness of social opportunities that its denial produces. The duties that correspond to the rights of cultural preservation refer specifically to the work of the state as primary interlocutor in any matter involving social equality.

As outlined by Fabre, the classical attribution of negative rights for civil and political rights, and of positive rights for social rights is internally inconsistent. Fabre demonstrates that civil and political rights may assume the form of positive rights, as long as they demand the intervention of a third party for the preservation of the object of the correlative right.<sup>120</sup> In reference to the right of seeking justice, Fabre declares that:

‘the right to seek redress in court, which is a civil right that all declarations of rights have insisted upon, is a positive right: it imposes a duty on the state to exercise justice, and therefore to provide a service to people’.<sup>121</sup>

Fabre thereby stresses the character of action that the state must undertake to secure the right of seeking justice.<sup>122</sup> Citizens of a state do not only have a negative right of non-interference with their goods, but also a positive right to preserve these goods, as rights for the protection of goods also imply a positive counterpart.

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<sup>119</sup> Fabre, *Social Rights under Constitution*, p. 40.

<sup>120</sup> Fabre, *Social Rights under Constitution*, p. 44.

<sup>121</sup> Fabre, *Social Rights under Constitution*, p. 44.

<sup>122</sup> Fabre, *Social Rights under Constitution*, p. 44.

Negative and positive rights can thus be conceived of as two faces of the same coin. If on the one hand citizens of a state have the negative right to preserve their goods, on the other hand they also have the positive right to the active protection of these goods by an external agent. Fabre outlines this double element in civil, political and social rights, which she calls the *complementarity thesis*.<sup>123</sup> In setting out a list of arguments supporting universally accepted rights that citizens have reason to have, Fabre concludes that it is important to stress both positive and negative rights of citizens, as ‘they each protect interests in certain ways, and taken together afford full protection to these interests’.<sup>124</sup> What is important to retain from Fabre’s discussion is that the *complementarity thesis* does not only posit negative social rights for the sake of autonomy and well-being. It also proposes the justification of positive rights that the state must undertake for enabling citizens to achieve the autonomy and well-being to which they aim.<sup>125</sup>

Fabre’s *complementarity thesis* constitutes an important step towards the position of positive individual rights for cultural protection. This is because a possible objection to the thesis of positive cultural rights might rely on the fact that cultural membership is only a negative right: members have the right of having a cultural membership (in that it emblematises the meaning of the choices they want to make in their lives, and therefore represents a primary good), but it is a right of non-interference with the good of cultural membership. In the name of Fabre’s *complementarity thesis*, this objection loses its appeal. In fact, it is not sufficient to affirm that citizens may enjoy their ‘negative’ right of cultural membership. What needs to be said is that they also hold a ‘positive’ right to the protection of their culture, which is duty of the state to preserve given that cultural membership represents a private as well as a public good. This discussion on positive cultural rights for individuals aims to affirm that there is a duty of the state to guarantee the preservation and the promotion of these rights in the public realm. For the purpose of this text, the notion of the individual right of cultural

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<sup>123</sup> Fabre, *Social Rights under Constitution*, p. 47.

<sup>124</sup> Fabre, *Social Rights under Constitution*, p. 47.

<sup>125</sup> See point (2) in Fabre, *Social Rights under Constitution*, p. 47.

membership has been outlined and supported by the rationales presented here in to a degree that enables application.

This discussion also founds the role of *special rights* for cultural protection, as outlined by Kymlicka and Leslie Green.<sup>126</sup> The justification of these rights can be conceived in terms of positive rights: in order to seek the autonomy and the well-being that every citizen has reason to want for his life, special rights should be addressed to people that suffer from a disadvantage in relation to other members of the society. It is through the acknowledgment of this inequality that Kymlicka and Green establish the rationales behind special rights for groups. By departing from an empirical analysis, Kymlicka affirms that minorities' members have to live with fewer opportunities than members of the majority culture, in terms of decision-making involvement, cultural affirmation and political relevance. At the theoretical level, this situation is translated into a disrespect of the principle of equality.<sup>127</sup> On the basis of this argument, Kymlicka justifies the need of special rights for groups as a form of reparation for the societal circumstances in which they live.<sup>128</sup> Green agrees with this point and she expresses it by appealing to the concept of ex ante compensation. In her view,

‘The special rights of minority cultures- the powers, liberties and rights that go to strengthen them- can thus be understood and justified as a kind of ex ante compensation. They are not a compromise with the requirements of justice, but a consequence of them’.<sup>129</sup>

Although Kymlicka's and Green's perspectives are important for acknowledging the need of special rights in issues of cultural inequalities in the social realm, in light of the justification for cultural rights on ground of individual rights advanced in the previous discussion, the position held in this text diverges

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<sup>126</sup> Will Kymlicka, 'Individual and Community Rights', in Baker, *Group Rights*, p. 24; Green, 'Internal Minorities and their Rights', p. 105.

<sup>127</sup> Kymlicka, *Liberalism, Community and Culture*, p. 182.

<sup>128</sup> Kymlicka, *Liberalism, Community and Culture*, p. 189.

<sup>129</sup> Green, 'Internal Minorities and their Rights', p. 105.



with them. In fact, special rights are justified at the individualistic rather than at the collective level. Additionally, these rights should be expressed in their positive form, which entails the commitment of the state to guarantee and promote those actual places of activity in which these rights can be practically enjoyed. These places of activity are *institutions*, which constitute the medium channel through which people can enjoy their rights of cultural membership in the public sphere and the state can deliver the benefits of these rights to their corresponding holders.<sup>130</sup> On this line of argument, the notion of groups will be drawn close to the notion of institutions, intended as those mediums through which individual rights can be enjoyed and even be conceptualised.

## **2.6. Individuals, Groups and Culture.**

The discussion advanced so far underlines a need to discern between issues concerning individuals and groups. The current debate on the topic of social inequalities brought about by cultural differences does not provide a unique answer to the problem and much confusion on issues of the status of groups, individuals and their rights makes the achievement of a common resolution difficult.

The main aims of this thesis are to elucidate the status of cultural groups and of individuals, to found their relation to potential cultural rights and to provide a system that would guarantee the right place for cultural groups and their members in a debate concerning social justice. The perspective that guides this analysis relies on the individual as the justification for rights for cultural protection. However, this position is not meant to undermine the role of cultural groups in this realm, which make it possible to be conceptualised and affirmed. For this purpose, the notion of capabilities will be introduced. Capabilities will provide the correct criterion for the recognition of social inequalities given cultural differences and for according rights to individuals that lack them.

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<sup>130</sup> For further reference on institutions as mediums, see Axel Honneth, *Justice as Institutionalized Freedom. A Hegelian Perspective*, in Asger Sørensen, Morten Raffnsøe-Møller & Arne Grøn, (ed.), *Dialectics, Self-Consciousness, and Recognition: The Hegelian Legacy* (Uppsala, NSU Press, 2009), p. 179.

The individuals' potential to realize their own ideals of life depends on the assets of the institutions they live in. A comparison between the notion of cultural groups and of social institutions will highlight the relevance that groups hold for actualizing the individual good of carrying on one's life's ideals. Cultural groups are the frameworks from which people can actualise the pursuit of their own ends. This is similar to institutions, which enable people to express and benefit from their own liberties and rights.<sup>131</sup> Namely, cultural groups should not undermine the individuals' necessary requirement of freedom to choose between any cultural affiliation that best suits with their values and ideals of a worthy life. In this respect, freedom of choice represents a pillar that justifies any reference to cultural groups as necessary institutional frameworks for the expression of one's individuality and its recognition.

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<sup>131</sup> 'Now by an institution I shall understand a public system of rules which defines offices and positions with their rights and duties, powers and immunities, and the like. [...] As examples of institutions, or more generally social practices, we may think of games and rituals, trials and parliaments, markets and systems of property', Rawls, *A Theory of Justice*, pp. 47-48. For further reference on the role of institutions for Rawls, see Rawls, *A Theory of Justice*, §10, pp. 47-52.

## Chapter III

### Capabilities for Cultural Groups

The notion of capabilities represents one of the central elements for the acknowledgment of a disadvantage of minorities' members in multicultural societies. The attribution of capabilities refers specifically to those members of cultural groups in a minority who live in conditions of disadvantage in relation to the members of the majority. This disadvantage regards issues of equality of opportunities, recognition and participation in the public political discourse, and freedom of affiliation. Although the theory of capabilities that will be considered in the following discussion refers specifically to issues of equality in multicultural states, it aims at a universal application where issues of disadvantage due to cultural membership occur.<sup>132</sup>

The concept of capabilities that will be supported in the following arguments is derived from Nussbaum's capabilities approach. Nussbaum develops her theory of capabilities in line with the same concept of capabilities proposed by Amartya Sen.<sup>133</sup> However, these two theories diverge on several points: Nussbaum's main aim is to give a philosophical ground 'for an account of basic constitutional principles that should be respected and implemented by the governments of all nations, as a bare minimum of what respect for human dignity requires'.<sup>134</sup> Sen's alternate account of the capabilities approach provides a principle for the economic understanding of the disadvantages of worse-off people on a global level. It takes into account not only quantitative measurements, such as GDP, but also the criteria of quality of life and of opportunities for

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<sup>132</sup> The references to Nussbaum's theory of capabilities concern the development of her thought in Nussbaum, *Women and Human Development* and Nussbaum, *Frontiers of Justice*.

<sup>133</sup> For reference on Sen's account of capabilities, see: Amartya Sen, *Inequality Reexamined* (Oxford University Press, 1992), pp. 39-42; Amartya Sen, 'Equality of What?', The Tanner Lecture on Human Values (Delivered at Stanford University, May 22, 1979), pp. 217-219., available on the Tanner Lecture' section on the University of Stanford website: <http://www.tannerlectures.utah.edu/lectures/documents/sen80.pdf>

<sup>134</sup> Nussbaum, *Women and Human Development*, p. 5.

redistribution of resources.<sup>135</sup> Hence, Nussbaum's account supplies a more theoretical and philosophical perspective than Sen's, which instead supports its application as a tool for the conceptualisation of specific policies for people in need and for the creation of a universally accepted principle of development.<sup>136</sup>

### 3.1. Why Capabilities?

The definition of capabilities that Nussbaum delivers intends for human capabilities to be perceived in terms of '[...] what people are actually able to do and to be [...]'.<sup>137</sup> In contrast, herein a further specification will be added to this definition, which will be valid both for individuals and for groups. In order to clarify this additional point to the definition proposed by Nussbaum, capabilities have to be intended as those criteria that determine what people *should be* able to do and to be, in reference to their cultural membership. This last point is extremely important to understand the range of originality that the concept of capabilities holds in the current discussion. In fact, capabilities will be used as a criterion for the acknowledgment of a disadvantage in the social realm due to the scarcity of opportunities of participation in any public, political decision. The disadvantage that members of minority cultures have to face in relation to equality in opportunities, recognition and participation in the public discourse, and freedom of affiliation has been analysed in the previous chapters. The implications of this disadvantage have been stressed in relation to the individuals' fundamental ability of articulating meaningful choices. This chapter will move on to present a solution to rebalance this disadvantage. This task has been addressed toward the application of a notion of capabilities aimed at the equalisation of the social status of the majority and of minorities.

The reason to consider the notion of capabilities and apply it to the debate on rights of cultural membership is that it alleviates the insufficiencies

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<sup>135</sup> Sen, *Inequality Reexamined*, p. 42; Amartya Sen, *Development as Freedom* (Oxford, Oxford University Press, 1999), p. 87.

<sup>136</sup> Nussbaum affirms that the list of capabilities can be intended as the object of an 'overlapping consensus', term borrowed by Rawls's terminology in *A Theory of Justice*. For reference on Nussbaum's meaning and use of the term 'overlapping consensus', see Nussbaum, *Women and Human Development*, p. 5.

<sup>137</sup> Nussbaum, *Women and Human Development*, p. 5.

perpetuated by the current debate on the subject. The present positions focus primarily on cultural rights for individuals and collectivities. However, as previously demonstrated, the justification of collective rights for cultural protection cannot be properly held. Having shed light on the misleading notion of collective rights presented by the current debate, it is clearly urgent for the sake of social equality to find a solution for problems made evident by the lack of opportunities in the political and institutional participation and in the consequent application of a conception of the good. The loss of these three elements can be translated in the loss of capabilities of *practical reason* and *affiliation* that members of specific minority cultural groups have to cope with.<sup>138</sup> Thus, capabilities seem to address those points that the notion of collective rights erroneously deals with. The following analysis will therefore be supported through the acknowledgment of the contributory role that capabilities play in the protection of culture and cultural membership.

### 3.2. A New Account of Capabilities.

Nussbaum defines capabilities as those categories that let primary needs be conceptualised as fundamental for each and every human being. Her account of capabilities is in line with a theory of human rights, which stresses the most necessary elements for a decent human life. However, capabilities differ from rights as they do not have any legal connotation; rather they are conceived by Nussbaum as those indicators that must be respected through legal protection (including rights). Therefore, Nussbaum's account of capabilities refers to an individualistic perspective that provides equal opportunities to all people, in relation to a conception of the good that tackles the minimum requirements for a decent life. Nussbaum sets up her account of capabilities in the context of the liberal state, in which any view of the good is preferred to any other. Capabilities are therefore those minimum requirements that every human being has reason to want to be preserved in his life. This definition of capabilities, as Nussbaum admits, is close to Rawls's list of primary goods.

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<sup>138</sup> Nussbaum, *Women and Human Development*, p. 79.

‘We can see the list of capabilities as like a long list of opportunities for functioning, such that it is always rational to want them whatever else one wants’.<sup>139</sup>

In the notion of capabilities for cultural groups that is endorsed in this thesis, capabilities will assume a slightly different meaning than that proposed by Nussbaum. This new account of capabilities will be subject to deal with the articulation of a disadvantage that is common to members because of a common cultural membership. Therefore, capabilities for cultural groups are intended for groups as they meet the needs of individuals as the members of a particular group. In this sense capabilities aim at the restoration of a disadvantage that exists because it refers to the articulation of different conceptions of the good. Capabilities for groups refer to the guarantee of the same opportunities for those people who engage in different ideals of a good life than those of the majority of the state. Therefore, this account of capabilities can only be applied to the concept of multicultural states composed by differentiated groups whose conceptions of the good are sometimes at odds with the majority.

The perspective guiding the present theory of capabilities will touch upon a supplementary case in the articulation of the approach adopted by Nussbaum in her work. In *Frontiers of Justice*, Nussbaum declares her aim to expand the Rawlsian theory of justice toward three specific cases that it seems to neglect, but that nevertheless represent important aspects to consider for a complete account of social justice.<sup>140</sup> These three cases include justice for disabled people, justice across national frontiers and justice for non-human animals.<sup>141</sup> Nussbaum’s capabilities approach deals specifically with the acknowledgment of a set of capabilities aimed at restoring equality against all discriminations due to gender, cultural affiliation and area of living. Her work bears no trace of capabilities for cultural groups. To enrich Nussbaum’s theory of capabilities and to provide a new

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<sup>139</sup> Nussbaum, *Women and Human Development*, p. 88.

<sup>140</sup> Nussbaum’s criticism refers to the version of Rawls’s theory of justice in Rawls’s *A Theory of Justice*.

<sup>141</sup> Nussbaum, *Frontiers of Justice*, pp. 14-22.

application of capabilities for cultural groups and members, a systematic examination of the theory of capabilities toward its application for cultural groups will be provided. The goal of this chapter is to demonstrate that the use of the notion of capabilities, intended as a criterion for understanding and operating toward equality and against cultural non-recognition and disadvantage, is extremely fruitful for a resolution on the topic of social justice in multicultural contexts.

At this stage, it is important to underline that the criterion of capabilities may be pushed toward the assessment of a disadvantage not only of members of cultural groups, but of cultural groups themselves. Far from affirming the metaphysical existence of cultural groups as independent from their members, the aim of this text is to supply a criterion that guarantees the legitimacy of individual cultural rights in the realm of multiculturalism. The notion of capabilities for groups plays an important role in representing a channel through which individual capabilities may be expressed at the social level and the attribution of cultural rights may be acknowledged in relation to social disadvantages. Therefore, it is vital to underline that group's capabilities, in this sense, are tightly connected and dependent on the members that will enjoy the content of the rights conceived for restoring the capabilities they lack. In particular, the focus will rest on those capabilities that Nussbaum names practical reason and affiliation, which refer to the ability of people both to have the opportunities to conceptualise and actualise their life plans, and to undertake social relations. Although the protection of these two forms of capabilities are intended as the protection of the corresponding abilities and opportunities for individuals, Nussbaum underlines the capability of affiliation (point A) by stating that 'protecting this capability means protecting institutions that constitute and nourish such forms of affiliation [...]'.<sup>142</sup>

Capabilities of groups therefore must not be intended as detached from individuals, but only as a criterion for the acknowledgment of a disadvantage that is shared among the members of a cultural group. The achievement of these capabilities is always linked to the individuals that compose the group and not to

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<sup>142</sup> Nussbaum, *Women and Human Development*, p. 79.

the group itself. In support of this statement, the capabilities approach rejects the system of the utilitarian account of equality. In contrast, the perspective guiding capabilities claims an approach that sees each individual as an end in himself.<sup>143</sup> Two notions of group's capabilities must therefore be differentiated. This distinction separates groups intended as independent entities and groups as places of affiliation and association dependent on members.

The argument for the rejection of capabilities for groups, as bearers of rights, argues that conceiving of groups as metaphysical entities affirms that they deserve special consideration and protection independent of the individuals. Therefore, focusing on capabilities for groups would require adopting a utilitarian perspective, as the implicit aim behind this view would be to reach the maximisation of capabilities for the members, rather than for each member intended as an end in himself. The critique of utilitarianism that Nussbaum endorses in her works guarantees the worth of each individual, conceived as an entity deserving the same amount of basic capabilities as any other human being.<sup>144</sup> Conversely, utilitarianism pursues the maximisation of capabilities in a society and consequently does not guarantee equal opportunities of 'functioning' to all individuals.<sup>145</sup> Relying on Nussbaum's critique of utilitarianism sets up the grounds for the rejection of capabilities for groups as entities detached from individuals. In fact, the utilitarian perspective would require aiming at the maximisation of capabilities for certain individuals of the group and not for others.

### 3.3. The Concept of *Relationality* for Cultural Groups.

In light of the previous distinction, the notion of capabilities for groups may be accepted only in particular circumstances, i.e. only if the notion of cultural groups play a specific and unique role in the social realm. This is similar to the role of

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<sup>143</sup> Nussbaum makes use of the Kantian form 'being an end in itself' for formulating her account of capabilities as criteria aimed at the guarantee of human dignity for each and every individual. For reference, see Nussbaum, *Women and Human Development*, p. 5.

<sup>144</sup> Nussbaum, *Frontiers of Justice*, p. 71.

<sup>145</sup> For an extended reference to Nussbaum's concept of 'functioning', see Nussbaum, *Women and Human Development*, pp. 86-96.



social institutions, which play mediating role between the state and the citizens.<sup>146</sup> This position emphasises the social embedment of cultural groups, conceived as those spaces where capabilities may be applied to the individuals of a particular group deserving special public recognition and legal support. As mentioned in the previous chapter, it is possible to compare the two notions of political and social institutions, and cultural groups by stressing the similar role that they play in the social sphere. If on the one hand institutions enable people's rights and liberties to be realised, on the other hand cultural groups enable meaningful choices to be made and cultural membership to be expressed. In view of the discussion proposed in the previous chapter, both liberties and cultural membership can be said to represent individual primary goods. Therefore, the role of institutions and cultural groups may be said to be similar, as they represent those channels that enable these primary goods to be enjoyed.

The social embedment of cultural groups is therefore an important aspect to be borne in mind, in relation with the notion of autonomy of groups. Several claims raised from cultural minorities argue for autonomy in relation to the central government, which according to these claims fails in representing them. Legal actions have been introduced in these cases: for example, the right to self-determination for indigenous people, which was ratified by the *UN Declaration of the Rights of Indigenous Peoples, Article 3*, represents one of them.<sup>147</sup> On a more theoretical level, the notion of autonomy for groups as the basis of the rights that cultural minorities have reason to enjoy has strongly been defended by Kymlicka. His position argues for the need of self-determination and autonomy of cultural groups in the context of multicultural states. These necessary conditions aim to enable people to plan their lives according to their beliefs and values.<sup>148</sup>

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<sup>146</sup> Honneth, *Justice as Institutionalized Freedom*, p. 179.

<sup>147</sup> *UN Declaration of the Rights of Indigenous People*, March 2008, p. 4. The full copy of the UN Declaration is available on the website:

[http://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf)

<sup>148</sup> Fiona MacDonald underlines that Kymlicka's account on minority rights stresses the congruence between individual's autonomy and group's autonomy [MacDonald, *Relational Group Autonomy: Ethics of Care and the Multicultural Paradigm* (Hypatia, Vol. 25, no. 1, Winter 2010), p. 197]. She affirms that 'Kymlicka situates cultural group autonomy as the central principle for multicultural societies' (p. 198), and in doing so associates the need of people's autonomy with the

Arguments for autonomy and self-determination may nevertheless acquire a detrimental side, if they continue to neglect the value of social embedment that comes within citizenship in a state. Autonomy and self-determination, in certain cases, lead to the consequence of excluding some groups of people from the public realm in the name of cultural membership. For example, indigenous people have sometimes had to pay the price of being cut off from the opportunities that are open to the majority for following autonomous and original cultural practices, such as different language, habits, education, etc. This situation may sometimes result in an outcome opposed to the aim of the politics of multiculturalism, whose goal is to assure cultural groups' autonomy. Policies that do not account for the connection between cultural groups and the government of the state inevitably end up neglecting people's diversities and needs, and denying opportunities for people to enjoy their rights of exit from groups. According to Fiona MacDonald, the best way to promote respect and active recognition of cultural differences is to adopt a philosophy of care that takes into account the element of autonomy in *relationality*.<sup>149</sup> In her view:

'if the continued power and influence of the state is not recognized and included in our understanding of group autonomy, then national groups like Canada's indigenous people face new forms of exclusion and inequality. [...] Due to these significant restrictions, it is a dangerous mischaracterisation to suggest that these groups are "autonomous" as they are prevented from exercising important practices of democratic agency'.<sup>150</sup>

MacDonald's account of *relationality* refers to a 'relational conception of group autonomy',<sup>151</sup> which means that groups should not be seen as entirely detached from their embedment in the social realm, but rather as parts of a higher

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right of their group to be autonomous. For further reference on Kymlicka's text, see Kymlicka, *Multicultural Citizenship*, pp. 77-79.

<sup>149</sup> MacDonald, *Relational Group Autonomy*, p. 196.

<sup>150</sup> MacDonald, *Relational Group Autonomy*, pp. 201-202.

<sup>151</sup> MacDonald, *Relational Group Autonomy*, p. 202.

whole that is represented by the society. In this context, *relationality* can represent a tool for maintaining the character of autonomy of groups along with the necessity to relate with the world ‘outside’ the group. MacDonald’s perspective is particularly relevant in this context because it founds the possibility of cultural groups as institutional assets, possible because of their deep embedment in the social realm. Furthermore, it makes the important point of keeping the unity of the state, which sometimes is overlooked by the advocates of multiculturalism. Further, *relationality* is central for granting the right of exit that members have reason to enjoy at any moment. To guarantee the development of those individual capabilities, whose absence would impede any member to voluntarily leave the group, it is essential to bear in mind the conception of the social embedment of cultural groups within the nation. The capabilities in question are, for example, the knowledge of the official language of the state, the understanding of the bureaucratic and legal systems, the inclusion in education and health programs, and so forth, which refer to Nussbaum’s capabilities of *practical reason*, *affiliation* and *control over one’s environment* (point A: Political).<sup>152</sup>

The concept of *relationality* is also extremely important to understanding the arguments for the position of cultural groups at the same level of social institutions. In fact, *relationality* presupposes that people live in a social context from which they cannot be separated without suffering from significant disadvantages in relation to the other citizens of the state. As institutions represent those channels through which people can accede to their rights and opportunities guaranteed by the state, cultural groups also constitute those mediums through which people can exercise their primary good of cultural membership. In both cases, the concept *relationality* helps to understand that although the primary good of cultural membership is an individual good, it is also embedded in a relational context with the other members that compose the cultural group, just as rights and opportunities are embedded in the society in which they are instituted.

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<sup>152</sup> Nussbaum, *Women and Human Development*, p. 80.

### 3.4. Rights and Goods.

A further distinction between rights and good must be made in order to ground the utility of the concept of capabilities for cultural groups. Individuals' rights of cultural preservation (or cultural membership) are supported by institutions, which represent the medium through which the government can adequately deliver its legislations and through which the citizens can effectively benefit from their rights.<sup>153</sup> Therefore, the constitutive place in which rights can be enjoyed by individuals is represented by governmental institutions, either formal or informal. In contrast, the protection of the ideals of the good does not find any specific place in the liberal state, as no conception of the good must be preferred on others. Therefore, no institutions are intended to contribute to the achievement of any conception of any ideal of a good life that is different from the majority one, which nevertheless is more or less explicitly implied in the institutions of a country.

The notion of the good seems therefore not to acquire any importance in the liberal public realm, as it refers to the private sphere of a human being. In the liberal theory, the role of the state is restricted to provide equal opportunities for each and every citizen to engage in the conceptualisation and actualisation of his own ideal of good. These opportunities are protected through the notion of rights, which in turn are defined for the individual enjoyment.

However, inequalities due to cultural membership are specifically caused by the inability of members of minority cultures to follow their conception of the good in the public realm. In this case, the notion of good acquires fundamental relevance, as it represents the main element involved in the assessment of the social disadvantage of cultural minorities. Hence, it seems that the reference to political institutions, as places where people can enjoy their rights, is not sufficient to tackle the problem of those inequalities that refer to the management of the notion of good. In fact, what it is at stake in this context is not the right of people to have and enjoy their cultural membership, but rather the real possibility of people to enjoy this right in a context not limited to political institutions, which

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<sup>153</sup> Honneth, *Justice as Institutionalized Freedom*, p. 176.

do not protect any particular conception of the good. The notion of right does not incorporate the inequality that may arise from the opportunities to follow original shared conceptions of the good, such as those provided by the membership in minority's cultural groups. The reference to the common good of members of minority cultures acquires specific importance as it is the source that allows people to understand the inequalities that exist in pursuing a conception of the good that is different from the majority culture's conception.

This imbalance between the real possibilities that people of a majority culture and people of minority cultures have in pursuing their different conceptions of the good generates a deeper inequality in the public realm. It can be translated in the language of capabilities as the loss of the two capabilities of practical reason and affiliation (point A).<sup>154</sup> It therefore seems urgent to appeal to a concept of capabilities for the protection of those ideals of good that are not conceived in the notion of right but that raise a great deal of questions of social justice in multicultural contexts. In particular, capabilities have to be intended not only for individuals, who are the focal point of the current discussion about social justice, but also for cultural groups, which are the place where the members can enjoy their capabilities of practical reason and affiliation.

A concrete example may be useful to understand this point. Suppose that the political institution of marriage is not established in the state *X*. *X* is internally composed of a majority culture, which does not believe in the good of the institution of marriage, and of a minority group *Y*, whose members instead deeply believe in the institution of marriage. The conception of good that *Y*'s members have is therefore connected to the possibility of each member to marry. However, no particular conception of the good is allowed privileged status in the context of *X*: therefore, *Y*'s members cannot get legitimately married, because the legalisation of marriage in this case would require the adoption of a partial view that benefits some citizens at the expense of others. This behaviour creates a disadvantage for the members of *Y*, as they would not be able to achieve their valued conception of the good in this case via the practice of marriage. This

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<sup>154</sup> Nussbaum, *Women and Human Development*, p. 79.

example illustrates that different conceptions of the good involve inequalities among individuals that are fundamental in any discourse on social justice, and that they should not be overlooked by the liberal theory of the state.

### 3.5. Justifying Capabilities for Cultural Groups.

It is now time to turn to the possibility of applying the concept of capabilities to cultural groups. In her theory of capabilities, Nussbaum sporadically refers to the social system of institutions, in reference to the notion of capabilities for human beings. In her view, institutions should work in relation to the promotion of a minimum threshold of capabilities for individuals.<sup>155</sup> Therefore, the institutional system should be oriented toward the just outcomes conceived in terms of capabilities. In this task, institutions represent an important element for the delivering of capabilities for each and every human being.<sup>156</sup>

It is possible to draw a comparison between Rawls's theory of institutions and Nussbaum's system of institutions. Rawls intends institutions both as abstract rules of conduct for individuals and as 'the realization in the thought and conduct of certain persons at a certain time and place of the actions specified by these rules'.<sup>157</sup> Likewise, Nussbaum conceives institutions both as an overall system that gives behavioural principles for the achievement of a minimum level of human dignity and as the actualisation of these rules in the capabilities of every individual. Both in Rawls's and Nussbaum's terms, an institutional system is just only if it both respects the requirements of justice at an abstract level and enables the internalisation and expression of institutional rules in individual practices.<sup>158</sup> A difference can be identified in these two accounts: Rawls adopts a procedural account of justice (which sees institutions as the system to organise in order to achieve justice), whereas Nussbaum undertakes an outcome-orientated perspective (which first sees the outcomes and tries to arrange institutions for the

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<sup>155</sup> Nussbaum, *Women and Human Development*, p. 75.

<sup>156</sup> For further discussion on Rawls's account of procedural justice, see Rawls, *A Theory of Justice*, p. 76.

<sup>157</sup> Rawls, *A Theory of Justice*, p. 48.

<sup>158</sup> Rawls, *A Theory of Justice*, p. 48.

achievement of a just outcome).<sup>159</sup> In spite of this divergence, justice for Rawls and Nussbaum is achieved when each individual is in the condition of benefiting from equal opportunities (in Rawls's terms) or capabilities (in Nussbaum's terms), which is possible when adequate institutions are set for this purpose. However, there are cases in which the only reference to individuals' opportunities or capabilities is not sufficient for guaranteeing the functioning of the opportunities that have been equally distributed among citizens. This is the case, for example, of justice in multicultural contexts: although every citizen is covered by the same rights and duties, other kinds of disadvantage remain to be addressed according to the particular requirements of some individuals or groups in distress.<sup>160</sup> Therefore, it seems that, in this circumstance, the only reference to opportunities or capabilities for individuals is not sufficient to determine and accord the rights that individuals have in relation to their cultural membership.

The focus on individuals in multicultural states is precisely the problem that capabilities for groups aim to address. Attributing capabilities to groups helps clarify the disadvantage that members of the same cultural groups have in relation to the rights of political participation, decision-making and life-planning processes. Enabling the capability approach regarding cultural groups bypasses the attribution of rights to cultural groups in order to alleviate the disadvantage of cultural minorities in the social and political realm. The adoption of an account of capabilities for cultural groups is beneficial for two reasons: first, it does not foster the attribution of rights to groups. Second, it furnishes a solution for those disadvantages that cannot be addressed through rights, because they refer to those situations that individual rights fail to address. Specifically, these situations refer to the disadvantages in public decision-making processes and in the ability to bring forth conceptions of the good divergent to the majority. Capabilities stress the importance that cultural groups have in their role of institutions, i.e. the place where the primary good of cultural membership can be expressed and pursued.

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<sup>159</sup> Nussbaum, *Frontiers of Justice*, p. 81.

<sup>160</sup> Some examples in this sense are the states of Canada, UK, USA, Belgium and Switzerland.

This is because cultural groups synthesise the capabilities that members lack as a result of their cultural membership.

‘[...] The capabilities are sought for *each and every person*, not, in the first instance, for groups or families or states or other corporate bodies. Such bodies may be extremely important in promoting human capabilities, and in this way they may deservedly gain our support: but it is because of what they do for people that they are so worthy, and the ultimate political goal is always the promotion of the capabilities of *each person*’.<sup>161</sup>

From this grounding of Nussbaum’s theory of capabilities for individuals, we can extend analysis to capabilities for groups. Whenever capabilities for individuals lack (as in the case of members of minority cultures), then there is an urgent need to repair the loss that is created by this disadvantage. However, the awareness of this loss and the justification for the attribution of rights for the protection of those people that are in distress sometimes needs to be reconceived, because the disadvantage is often not recognised as important in the social realm, as it addresses to the notion of good.

The acknowledgment of disadvantages due to cultural affiliation must therefore proceed from the individuals to the society, and the corresponding solutions must proceed from the society to the individuals. An intermediate functional element is therefore needed in order to accomplish the task of stressing the lack of capabilities and to accord the necessary capabilities to the individuals that need them. This is the role both of institutions and of cultural groups. Cultural groups represent those channels through which individual rights of cultural protection are acknowledged and met.

As analysed in the previous chapter, individuals are entitled to the right to see their culture preserved, which can only be justified at the individual level.<sup>162</sup>

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<sup>161</sup> Nussbaum, *Women and Human Development*, p. 74

<sup>162</sup> See section 2.4.2.



Assuming collective rights of cultural preservation would require elevating cultural groups to metaphysical entities, which have the right to hold actions against the well-being of their members for the sake of the preservation of the group. The right that individuals would have in this context would be untouchable and unquestionable. Therefore, positing an individual right to cultural preservation requires positing a duty of someone to meet the requirements of this right. In other words, there must be an agent that takes action for the protection of the right that each human being has to preserve his cultural membership. As argued in the previous chapter, this duty must be held by the government of the state, which has the duty to answer with the appropriate ‘tools’ for the protection of the individual positive right to cultural membership.<sup>163</sup> In this context, the more successful ‘tools’ for the protection of this right refer to the maintenance of the environment in which cultural membership can be expressed, i.e. the preservation of the cultural group their membership is linked to. The translation of the individual right for the protection of their culture at a collective level does not result in the legal attribution of a right for groups, but rather in assuring that the correct capabilities for the given cultural context to exist and to preserve the place where members can enjoy their right of cultural membership.

The capabilities at stake in this context refer only to two of the categories that Nussbaum acknowledges: practical reason and affiliation.<sup>164</sup> These capabilities play an important role in the circumstance considered, i.e. in multicultural societies. In fact, although the ten categories of capabilities proposed by Nussbaum refer specifically to individuals, only these two can be upheld in reference to the collective dimension of cultural groups. Quoting Nussbaum:

‘Among the capabilities, two, *practical reason* and *affiliation*, stand out as of special importance, since they both organize and suffuse all the others, making their pursuit truly human. [...] To plan for one’s life without being able to do so in complex forms of

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<sup>163</sup> See section 2.5.

<sup>164</sup> For reference to Nussbaum’s complete list of capabilities, see Nussbaum, *Women and Human Development*, pp. 78-80, and Nussbaum, *Frontiers of Justice*, pp. 76-78.

discourse, concern, and reciprocity with other human beings is, again, to behave in an incompletely human way'.<sup>165</sup>

In short, the extension of the concept of capabilities from their individual source to the collective dimension refers to the fact that capabilities represent the best notion for the protection of the ideals of a good life that are not conceived in the language of rights. Capabilities for groups, in this sense, are intended as those features that deliver claims for the loss of fundamental capabilities for members in relation to their common cultural membership (and therefore in relation to their common conception of the good). In this respect, applying the notion of capabilities to groups enables the understanding of the common disadvantage that individuals face in relation to their cultural membership and addresses the problem at a social level through the institutional character acquired by groups. An examination of the application of the two categories of capabilities of practical reason and affiliation for cultural groups will follow, along with an assessment of the benefits that it produces.

### 3.5.1. *The Capability of Practical Reason for Cultural Groups.*

**‘Practical Reason.** Being able to form a conception of the good and to engage in critical reflection about the planning of one’s life. (This entails protection for the liberty of conscience)’.<sup>166</sup>

The capability of practical reason defined by Nussbaum refers to the need of people to freely plan their lives by following the conception of the good they hold to be the best according to their values and beliefs. This category of capability is therefore very close to the content of the right to cultural membership, which has been accounted as primary good. Thus, the capability of practical reason protects people’s liberty to articulate their lives in relation to the goods they believe in, which may be supported by a specific cultural group.

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<sup>165</sup> Nussbaum, *Women and Human Development*, p. 82.

<sup>166</sup> Nussbaum, *Women and Human Development*, p. 79.

If the capability of practical reason refers to individuals' rights of cultural membership, it remains to be demonstrated how capabilities may be applied at the collective level. To illustrate this point, it must be borne in mind once again that capabilities for groups can only be understood in relation to capabilities for their members.

Applying the notion of capability for practical reason to cultural groups affirms that cultural groups should enjoy the capability to 'form a conception of the good' and 'engage in a critical reflection about the planning of one's life'.<sup>167</sup> In order to understand how these two sentences may be linked to the notion of cultural groups, it is important to stress that the current analysis is applicable in the context of multicultural states, in which members of minorities lack fundamental capabilities, specifically those of practical reason and affiliation.

If members of a minority cultural group are not able to enjoy the capability of practical reason, it means that none of them are able to enjoy their right to make meaningful choices. The difficulty in ensuring this capability for each and every member in their individuality can be addressed by widening the concept of the claimant to the group, who will be responsible for its delivery in the social sphere. In fact, if lack of capability of practical reason for the members of a minority group is brought forth by the minority group itself as a claim against the majority, then its resonance is strengthened. This process uniquely enables the minority group to expose solutions to restore the capability for each member. Capabilities for groups, in this sense, are the tool that makes the acknowledgment of a disadvantage that touches the members of the group possible. However, at the social level, affirming that it is the group that lacks of capabilities may help to recognise members' claims in a public and higher level, instead of in a private and secondary sphere.

Therefore, saying that in certain cases minority cultural groups lack the capability of practical reason means that their members lack this capability because of their membership in the group. Thus, their inability to form a conception of the good or to engage in a critical reflection about the planning of

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<sup>167</sup> Nussbaum, *Women and Human Development*, p. 79.

one's life affects the survival of the group, which in turn affects the existence of the context in which members are able to make meaningful choices for their lives.

In order to clarify this concept, a hypothetical example will be analysed. Suppose that *Q* is a minority cultural group, whose members have a strong belief in their god. Suppose also that the majority culture *P* in which *Q*'s members live bans any credo; instead *P*'s members think that religion is only a human construction and that the belief in god has no real value. It is obvious that *Q*'s members suffer from a disadvantage, as they cannot make use of any institution to express their religion. Therefore, their conception of the good (in relation to the spiritual part of their selves) cannot be expressed and causes a loss in their capability of practical reason. According capabilities to *Q* enables the reparation of the disadvantage held by *Q*'s members. This is because this disadvantage is caused by the common membership to *Q*, which in turn represents the necessary environment in which the reparation of this deficiency can occur. Attributing capabilities to *Q* would also provide a place for *Q*'s members to enjoy their credo and express their conception of the good. In fact, given that the two notions of cultural groups and institutions are comparable and that the utilitarian perspective is rejected, the attribution of capabilities to groups will not degenerate in the conception of groups as entities detached from their members.

Capabilities for groups are therefore aimed toward two goals: first, the delivery of individual claims into the public sphere (this is the role of groups as institutions and it refers to the claims of justice as recognition); second, the protection of the context in which individuals can make meaningful choices and therefore enjoy their capability of practical reason.

Furthermore, stating that cultural groups are entitled to hold capabilities avoids attributing rights to groups, the attribution of which would imply a submission of the individuals for the sake of the group. In opposition, capabilities for groups are aimed at the well-being of members: they represent those channels that enable members to enjoy their capability of practical reason. Capabilities for groups are therefore a sort of guarantee for the acknowledgment of capabilities for each and every member. In this sense, as long as the group, intended as the union

of all its members, does not benefit from the capability of practical reason, it cannot be said that a threshold level of capabilities has been reached for its members.

### 3.5.2. *The Capability of Affiliation for Cultural Groups.*

**‘Affiliation. A.** Being able to live with and toward others, [...], to engage in various forms of social interaction [...]. (Protecting this capability means protecting institutions that constitute and nourish such forms of affiliation, and also protecting the freedom of assembly and political speech)’.<sup>168</sup>

At this point, it is easier to understand the reason why the capability of affiliation (point A) addresses cultural groups as well as individuals. Cultural groups (as a union of members) represent those places where cultural affiliation is possible.

According to Raz, some collective social forms (in which the notion of culture can be included) require the existence of social institutions for their realisation.<sup>169</sup> The very possibility of protecting the capability of affiliation for members is connected to the protection of those places where people can express their capability to live in harmony with others and to ‘engage in various forms of social interactions’.<sup>170</sup>

Protecting capabilities of practical reason and affiliation for groups constitutes a necessary element for the individual’s expression of other capabilities. This position adheres to Nussbaum’s conception of capability of affiliation: in point A, Nussbaum underlines the need of protecting the institutional structure that leads these capabilities to be realised.<sup>171</sup> The institutional structure in question is represented by cultural groups, which

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<sup>168</sup> Nussbaum, *Women and Human Development*, p. 79.

<sup>169</sup> Raz, *The Morality of Freedom*, p. 310.

<sup>170</sup> Nussbaum, *Women and Human Development*, p. 79.

<sup>171</sup> Nussbaum, *Women and Human Development*, p. 79.

constitute the institutions that link those citizens that are members of a cultural group and the state.

Once again, capabilities represent the channels through which disadvantage can be recognised and actions can take place for repairing this disadvantage. The content of action that capabilities deliver is a specific feature that Nussbaum particularly wants to underline in her account.

‘[...] Thinking in terms of capability gives us a benchmark as we think about what it really is to secure a right to someone. It makes clear that to do this involves affirmative material and institutional support, not simply a failure to impede’.<sup>172</sup>

The reference to action strengthens the role of capabilities as appropriate instruments for the delivery of the state’s duty to cultural protection that has previously been established through the examination of Fabre’s *complementarity thesis*.

A reference to a concrete example that stresses the benefits that capabilities for groups deliver can help to understand the extent of the improvements that the attribution of the notion of capabilities to cultural groups achieves.

*R* is a minority cultural group, composed by numerous members and situated in the context of a wider and different culture, *T*. *R*’s members promote a set of values that differs from those of the majority culture. *R*’s members have to adequate the practice of their values by means of the institutions that are set for the promotion of *T*’s values. In concrete, imagine that *R*’s members have the practice of celebrating religious ceremonies (celebrations of saints or of funerals) through processions on streets and that this practice constitutes a pillar of their cultures. In contrast, *T*’s members do not act in such a way; in fact, they prefer private ceremonies and disregard public manifestations of their religious practices. In this context, *T*’s institutions do not assure the capability of *R*’s members to ‘affiliate’ with each other in the occasion of religious celebrations. It is clear that *R*’s

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<sup>172</sup> Nussbaum, *Frontiers of Justice*, p. 287

members are in disadvantage compared to *T*'s members, because they cannot rely on any recognised institution for the practice of the constitutive elements of their culture. However, *R*'s members should enjoy their right of cultural membership and of all the values that are connected to it, which include the public celebrations of festivities and commemorations. This act does not cause any harm to anyone and they do not oblige other people to follow their practice, if not wished. Therefore, it is urgent to provide a place where *R*'s members can enjoy public ceremonies, or their capability of affiliation would not be respected.

In this situation, according capability to *R* would help to acknowledge the need of *R*'s members to engage in the practice of public manifestations and it would also recognize the institutional status of *R*, which would constitute the legal place in which *R*'s members enjoy their valuable practices. According the capability of affiliation to *R* means enabling *R* to be the place in which its members can affiliate and perpetuate the practices that constitute their objects of meaningful choice.

Hence, thinking in terms of capabilities avoids thinking in terms of rights and enables the identification of the correct place and role that cultural groups have in relation to their members. In this context, the language of capabilities turns out to be more advantageous than the language of rights. Several points will be discussed in this regard.

### **3.6. Capabilities and Rights.**

The discussion over the rejection of rights for cultural groups touches upon the inconsistency of the conception of groups as metaphysical entities. However, attributing the notion of capabilities to cultural groups does not allocate rights for cultural groups. It is important to keep the notions of rights and capabilities separate. Although capabilities are aimed at the recognition of a loss of basic elements of human life, they are different from rights. It is important to stress that capabilities do not have any legal connotation; they only represent a category through which basic elements for human dignity are conceived.

The advantage of thinking in terms of capabilities rather than rights is that capabilities are more useful to truly understand and act toward the reparation of disadvantages. The focus on outcomes in the notion of capabilities helps to identify the problem and to stress its urgency, but it does not in anyway involve any legal implication. In this way, the link to rights for cultural groups is avoided, which instead refer to individuals.

Capabilities provide a further element that is not offered by the right oriented perspectives. The advantage of endorsing an account that acknowledges capabilities for cultural groups is that capabilities focus on the real content of the claims advanced by minorities' members and help to conceptualise responses ad hoc for every situation. In contrast, rights for minorities tend to generalise the solution that singular and specific claims bring forward, by proposing the same category of rights for all of them.

It is on this point that the notion of capability plays its complementary role to rights. Capabilities, in this sense, are designed to conceptualise and repair a disadvantage that is caused by the adoption of different conceptions of the good that go beyond the attribution of equal rights for citizens. Given that rights are not conceived to protect any particular conception of the good, capabilities correct this shortcoming. Specifically, they protect those issues that require the adoption of a conception of a good, which cannot be assured by the notion of rights.

In the name of the attribution of the notion of primary good to cultural membership, individuals have a right to see their culture preserved and their membership respected. Therefore, at the individual level, it seems that the notion of right correctly completes the need for individuals to enjoy their cultural membership. However, the notion of right of cultural membership is not sufficient for the equalisation of the opportunities held by citizens of a same country, but with different cultural memberships. This disadvantage has been stressed by Kymlicka's and Green's perspectives, which appeal to the notion of special rights for groups as a tool for the restoration of this inequality.<sup>173</sup>

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<sup>173</sup> Kymlicka, *Liberalism, Community and Culture*, p. 189; Green, 'Internal Minorities and their Rights', p. 105.



As established in the previous chapter, any reference of a collective dimension of cultural rights is doomed to fail. Any attempt to justify cultural rights for groups cannot be established, because it would open the possibility of requiring submission of the members to the will of the group. However, the notion of collective rights can successfully be replaced by the notion of capabilities for cultural groups, which deals with the assessment of those inequalities due to divergent conceptions of the good.

The notion of good can therefore be managed through the concept of capabilities, which instead of implying the direct connection with collective rights, aims to repair a disadvantage in relation to the acknowledgment of different conceptions of the good undertaken by several cultural groups in the same state.

The perspective that justifies the attribution of the notion of capabilities for groups should now appear clearer. Further, the improvements that capabilities can offer to solve problems of social injustice due to diverse cultural membership have been expounded. Herein, capabilities are conceived as a criterion that guarantees to members of cultural groups the possibility to enjoy their right to cultural membership and their basic capabilities, and to avoid the attribution of rights to cultural groups. Through the acknowledgment of this new perspective of capabilities for cultural groups, the proper place for individuals and for cultural groups is established. This position is beneficial in two senses: it guarantees both equal rights for members of cultural groups and equal capabilities of expressing these rights.

## Conclusion

The arguments exposed in these chapters intend to provide a solution to issues of social inequality due to cultural differences. The two notions of individual rights and collective capabilities aim to offer a conception that rightfully distinguishes between the needs of cultural members and of their cultural groups. Several arguments for the rejection of collective rights for cultural protection have been exposed, which touch on the inability of groups to hold any metaphysical position that could damage the sphere of individuals. In contrast, the notion of capability has been identified as the proper solution for the acknowledgment of a disadvantage that members of the same group have to deal with. This disadvantage can also be conceived as an inability that the whole community has to face because of a common cultural membership. Capabilities for cultural groups are therefore useful for the conceptualisation of a shortcoming that is caused by the shared disadvantage of all the members of a minority group. In particular, the capabilities taken into account refer to Nussbaum's capabilities of *practical reason* and *affiliation*, which represent those categories that protect people's ability to articulate a conception of the good life, embedded in a shared sense of commonality with the other members of the group.

Furthermore, the notion of capabilities for groups avoids the reference to any right-oriented discourse. The great advantage that a theory of capabilities for cultural groups achieves is the creation of an account that does not presuppose the categorisation of cultural groups as independent entities, protected from legal connotations, but rather as instruments for the acknowledgment of an inequality due to the common cultural membership to a cultural minority. Additionally, an account of capabilities for cultural groups succeeds in providing a consistent and original contribution that overcomes the disagreements in the past debate over social justice in multicultural states. The conclusion of this thesis stresses that these disagreements can be avoided by introducing a new account of capabilities for cultural groups, as the channel that enables the conceptualisation of individual

rights and that identifies the correct role of cultural groups on issues of social justice.

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